



**REPORT
OF THE
COMMISSION OF INQUIRY
ALLEGATIONS AGAINST TWO POLICE-OFFICERS**



ଶର୍ମିଷ୍ଠ ନିଧନ

GOVERNMENT OF ORISSA
HOME DEPARTMENT

CONTENTS

CHAPTER I

INTRODUCTION

	PAGES
(i) Events that led to the Constitution of the Commission of Inquiry.	1
(ii) Notification appointing the Commission	4
(iii) Powers of the Commission	5
(iv) Procedure adopted by the Commission	8
CHAPTER II	
(i) Participants in the inquiry	13
(ii) Terms of Reference—An analysis	14
(iii) Principles of evaluation and appreciation of Evidence.	16
(iv) Principal witnesses	17
CHAPTER III	
(i) Outraging of Modesty by Shri Chauhan—Contentions Advanced.	20
(ii) Conclusion	21
(iii) Did Shri Chauhan abet ?	21
(iv) Conclusions	22
CHAPTER IV	
(i) Did Shri Mallik Outrage the modesty of the Oriya Lady House Surgeon ?	23
(ii) Story as told by principal persons	25
(iii) Significant variations and omissions	28
(iv) Defence contentions	29
(v) Shri Chauhan plays the role of a protector of Shri Mallik.	37

	PAGES
(vi) Inaction of Shri Mallik	... 40
(vii) Search for defence	... 41
(viii) Shri Mallik gives doubtful evidence in regard to trip to Bolangir.	... 41
(ix) Another circumstance—A test of truth	... 43
(x) Begging excuse	... 44
(xi) Absence of motive	... 45
(xii) Conclusions	... 46

CHAPTER V

(i) Whether the impugned letter dated the 30th December 1967 was addressed by Shri Mallik to Shri Chauhan casting aspersions on the moral standards of Oriya girls and making a reference to the Bus incident.	... 47
(ii) Conclusions	... 58

CHAPTER VI

(i) Circumstances leading to the agitation	... 60
(ii) Conclusions	... 70
(iii) Acknowledgment and assistance	... 71

ANNEXURES :—

(i) Orders on Privilege	... 73
(ii) Orders on Privilege issue	... 102
(iii) List of Witnesses	... 108
(iv) Memorandum of Inspection	... 110

REPORT OF THE COMMISSION OF INQUIRY
ALLEGATIONS AGAINST TWO POLICE OFFICERS,
HIGH COURT BUILDINGS, CUTTACK.

CHAPTER I

INTRODUCTION

**(i) Events that Led to the Constitution of the Commission
of Inquiry**

1. On the 27th December 1967, Rourkela-Cuttack Deluxe Bus commenced its journey to Cuttack sometime in the afternoon round about 5 p.m. Three persons who were to centrally figure in a drama later to be enacted on the floor of the bus that night boarded the bus at Rourkela, two from Sector-2 (Rourkela) bus-stand which is the starting point of the journey and the third from old Rourkela bus-stand. Of these three persons, one is a lady House Surgeon serving on the staff of S. C. B. Medical College, Cuttack, and married to one Manoranjan Patnaik who was then working as a senior project engineer in Messrs. Kalinga Otto(P) Ltd., at Rourkela. He is now in West Germany undergoing some higher technical training. The other two are top-ranking police officers belonging to Indian Police Service and are known to each other. They are : Shri S. P. Mallik and Shri D. P. S. Chauhan and the latter, who is junior to the former in service, succeeded him as the Additional Superintendent of Police, Rourkela, sometime in the middle of 1967. The lady, who is Dr. (Smt.) Minati Patnaik, and Shri S. P. Mallik travelled in the bus from Sector-2 bus-stand to old Rourkela bus-stand unknown to each other. The lady was accompanied by her husband Shri Manoranjan Patnaik during this short journey and at the old Rourkela bus-stand she was seen off by her husband. Thence-forward she continued her journey up to Cuttack which was her destination.

2. At old Rourkela bus-stand the lady and her husband got down from the bus for a last-minute get-together, before they separated, as usually happens. The lady's husband had a nodding acquaintance with Shri D. P. S. Chauhan and so, when he found Chauhan at the bus-stand, he greeted him and learning from him that he was also travelling in the same bus up to Cuttack, introduced his wife (Smt. Minati Patnaik) to him and requested him to look after his wife's comforts during the journey, if need arose.

3. Shri Mallik had prior knowledge, acquired at Sector-2 bus-stand, that Shri D. P. S. Chauhan was also to be his co-passenger in the bus. He too got down from the bus at the old Rourkela bus-stand expecting to find Chauhan and found him. They entered the bus sometime after the lady had secured her seat. They occupied two adjoining seats for the first lap of their journey up to Sambalpur, where Shri Mallik shifted to a seat just to the rear of the lady. Somewhere in between Rairakhol and Angul when it was past the hour of midnight, Shri Mallik is alleged to have outraged the modesty of the lady (Smt. Minati Patnaik) in the moving bus.

4. The news of this incident inside a moving bus, slowly spread by word of mouth, and as appears from evidence, was confined within a limited circle. There was no public agitation over it till March 1968.

5. In the second week of February, 1968, the Head of the Vigilance (Police) Department, having heard of this incident, launched an inquiry himself holding that it involved misconduct on the part of two top-ranking Government officers. He submitted a report to the Government on 23rd February 1968, confirming the truth of the news.

6. Month of March, 1968, was a period of hectic activity. The news of the bus-incident informing the misconduct of those two highly placed police officers towards an educated married lady was given wide publicity and flashed in bold headlines in various newspapers, either with or without comment between 7-3-68 and 29-3-68. The Editor, Niakhunta in the February issue of its Magazine published the photo copy of a letter alleged to have been written by Shri Mallik to Shri Chauhan and also an article under caption "SATYA O SANGHATIKA" in which vitriolic comments were poured out against those two officers, viz., Shri Mallik and Shri Chauhan, after clearly indicating therein that the published letter though manifestly does not disclose the writer, is to be attributed to the penship of Shri Mallik. Some other newspapers also took up the cry against these two officers. Basing on newspaper reports of the bus-incident, the members of the Orissa Legislative Assembly likewise took up the matter in the Assembly. The Chief Minister made a statement on the floor of the Assembly on 13th March, 1968, disclosing the final decision of the Government, to get the matter inquired into by the I.G. Police (General) and to take appropriate action on the basis of his findings. This declaration of the Chief Minister appeared to snuff out the agitation for the time being.

7. With the circulation of Niakhunta, the letter supposed to have been written by Shri Mallik came to the notice of the students. and it had a disturbing effect on their minds. The students took note of this letter in a meeting of the S. C. B. Medical College Students' Union held on 19th March, 1968, and decided to agitate the matter. They delivered an ultimatum to the Chief Minister on 21-3-68, demanding removal of the two police officers, Shri Mallik and Shri Chauhan from the State of Orissa. It also expressed an ominous warning that if the demand of the students was not fulfilled within the time-limit fixed therein, unpleasant consequences will follow for which responsibility will lie squarely on the administration.

8. The news of this ultimatum of the students to the Chief Minister, Orissa, was published in the newspapers, Prajatantra, Kalinga and Matrubhumi of Cuttack. The attention of Shri R. K. Padhi, I.G., Police (General), who had undertaken a regular inquiry into the alleged misconduct of the two police officers in pursuance of the Home Department's letter No. 27/HOMESEC.. dated 13-3-68, was drawn to these publications. He read in them an insinuation that when he and the delinquent officers belong to the same Indian Police Service, his loyalty to the service will overwhelm his objective assessment. He suffered an affront thereby and rightly so. He promptly wrote to the Government on 22nd March, 1968, recommending appointment of a Commission under the Commissions of Inquiry Act, and desired to be relieved of the burden of conducting the inquiry.

9. There was a recrudescence of the assembly agitation by means of tabling adjournment motions following the delivery of the ultimatum by the students to the Chief Minister. Various apprehensions were expressed if Government remained inactive over the bus-incident and varying suggestions were also made regarding appropriate steps in the matter for adoption by the Government. One view was for enquiry by Vigilance and suspension of the officers. The second view was for judicial inquiry and the third for departmental inquiry.

10. In reply, the Chief Minister gave his reasons for opting for an inquiry by the I.G., Police (General) in preference to other modes of inquiry and promised appropriate action, depending upon the result thereof. Later that day, obviously on receiving the letter of I.G. of Police (General), declining to proceed with his inquiry, and recommending setting up of a Commission, the Government issued a press-note declaring their decision to hold an open inquiry into this matter through a Commission to be set up under the Commissions of Inquiry Act. This press-note is dated 22-3-68. Shortly thereafter, the Government issued a

notification on 28th March, 1968, appointing me as the one-man Commission of Inquiry. The full text of the Notification is set out hereinbelow :—

(II) Notification Appointing the Commission:

"HOME DEPARTMENT

NOTIFICATION

The 28th March 1968

No. 1323-C., Whereas the following allegations against two Police Officers serving in this State, namely Shri S. P. Mallick, I.P.S., and Shri D. P. S. Chauhan, I.P.S., have been the subject matter of publication in leading newspapers/periodicals of the State like the Prajatantra, the Kalinga, the Matrubhumi and the Niakhunta ;

- (i) That it is alleged that while travelling in the Cuttack-Rourkela Public Bus during the night of the 27th December, 1967, the above two officers outraged the modesty of an Oriya Lady House Surgeon of the S. C. B. Medical College, Cuttack, who was a co-passenger.
- (ii) That it is also alleged that on the 30th December, 1967, Shri S. P. Mallick, I.P.S., addressed a letter to Shri D. P. S. Chauhan, I.P.S., naming a reference to the above incident and casting serious aspersions in general on the moral standards of Oriya girls and girl Medical students in particular.

WHEREAS this matter has been agitated in the Orissa Legislative Assembly by means of a Call Attention Motion on the 13th March 1968, and an Adjournment Motion on the 22nd March 1968 ;

WHEREAS the Students' Unions of the Medical College at Cuttack, Berhampur and Burla, by issue of a notice to the State Government, dated the 21st March 1968, and the Students' Unions of as many as 10 Colleges by a similar notice, dated the 24th March 1968, have also demanded an inquiry into the matter ;

WHEREAS the State Government are of the opinion that that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into the above matter which are definite matters of public importance ;

NOW, THEREFORE, the State Government in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act. 1952, hereby appoint a Commission of Inquiry consisting of

Shri Justice S. K. Ray of the Orissa High Court to enquire into the following matters, namely :—

- (1) WHETHER THE ABOVE ALLEGATIONS ARE TRUE AND CORRECT
- (2) THE CIRCUMSTANCES LEADING TO THE AGITATION THEREON

The Commission of Inquiry may also perform such other functions as are necessary or incidental to the inquiry.

Government shall place before the Commission the newspaper publications, notices received from the Students' Unions and the discussions in the Orissa Legislative Assembly on the Call Attention Notice and the Adjournment Motions.

WHEREAS Government are of opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the said Act should be made applicable to the Commission, Government direct that the said provisions shall apply to the Commission.

Government further direct that the Commission shall submit its report to the State Government on or before the 30th June 1968.

The Headquarters of the Commission shall be at Cuttack.

By order of the Governor

B. B. RATHI

Secretary to Government."

(iii) Powers of the Commission:

11. The notification appointing the Commission was issued under section 3 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as the Act). Section 4 of the Act enumerates the general powers which all commissions appointed under the said Act shall possess, namely, the power of a Civil Court while trying a suit under the Code of Civil Procedure in respect of the matters set out in clauses (a) to (f) thereof. In other words, the provisions of the Civil Procedure Code governing the matters contained in clauses (a) to (e) and matters which may be provided for under rules framed by the State Government under section 12 of the Act, shall apply to the Commission proceedings to the same extent as they apply to the proceedings relating to trial of a suit in Civil Court. In addition to the generality of these powers, the State Government may by rules framed under section 12 of

the Act vest other powers of a Civil Court under the Code of Civil Procedure in the Commission. Section 5 of the Act provides for additional powers of the Commission which can be enjoyed by the Commission only if the Government by notification in the official gazette direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission. In the instant case, the Government have directed that having regard to the nature of the enquiry to be made and other circumstances of the case, the provisions of sub-sections (2), (3), (4) and (5) of section 5 of the Act, shall apply to the Commission.

12. Government of Orissa have framed certain rules under section 12 of the Act which have been published in an Extraordinary Issue of *Orissa Gazette*, dated 17-11-67. They provide, *inter alia*, specifically for issuance of notice to persons for giving evidence, the manner of filing statements of persons intending to give evidence before the Commission, recording of evidence, obligation of the commission to issue notice to persons who are likely to be prejudicially affected by the inquiry or whose conduct is considered necessary to be enquired into and to give them an opportunity to be heard in the inquiry and to produce evidence in his defence, right of cross-examination of every person referred to in rule 9 and with permission of the commission of any other person whose evidence is recorded under rule 8. In rule 12 power has been conferred on the commission to regulate its own procedure in respect of any matter for which no provision is made in the rules.

13. Thus, in ultimate analysis, having regard to the provisions of the Act and of the rules framed thereunder the power of the commission is much wider in scope and ambit than that of any court of law, constituted under any law for the time being in force, for dispensing justice in cases arising between man and man, man and State. The object and purpose of conferring larger power and exclusive jurisdiction is that the inquiry into the definite matters of public importance, existence of which is the *sine qua non* for due exercise of power by the Government to appoint a commission under the Act, will not be thwarted. There is no power in a Commission to pass any enforceable judgment, its report has no force by itself nor any penal effect. Nevertheless, the Commission appointed under the Act, in the words of Lord Denning : "is an elaborate and costly machine, equipped with all the engines of the law—counsel, solicitors, witnesses on oath, absolute privilege, openness to the public (so far as possible) and committal for contempt (here for certain category of offences)—but it suffers from the invincible drawback, in doing justice, that there is no prosecution, no charge and no defence."

14. To the same effect are the words of Shri S. R. Das, formerly Chief Justice of India, in his report on the allegations made against Sardar Pratap Singh Kairon, Chief Minister of Punjab viz. :

" In an inquiry under the Act (Commissions of Inquiry Act, 1952), however, there is no plaintiff or prosecutor, there is no defendant or accused and there is no lis or charge to be adjudicated upon by the Commission by a judgment or order binding and enforceable interparties In other words, the Commission is a machinery set up by the appropriate Government to inquire into a definite matter of public importance, to collect such relevant materials as it may and to make a report to the appropriate Government containing its own view on the basis of such materials so as to inform the mind of the appropriate Government and to enable it to take such action as it may, in the circumstances, think fit. "

15. The function of the Commission, thus, has three aspects. It has investigative, adjudicatory and recommendatory jurisdiction. As regards procedural aspect of the inquiry, the Commission has unbridled power to frame its own procedure and thereby discharge, to some extent, if I may say so, legislative function. In achieving its primary purpose of informing the mind of the Government on the matters of reference, the Commission exercises multilateral jurisdictions. This inquiry falls short of a full-fledged judicial trial or investigation in that the result is unenforceable and carries no sanction and rule of finality of decisions which is an ingredient of the ultimate result of judicial trial or inquiry, does not operate and there is no appeal from the findings of the Commission. Further, the law under which this Commission is constituted provides that nothing said or done here can be utilised against any person whose interest or right appears to be affected by any finding of the Commission. Rules framed under the Commissions of Inquiry Act enjoins upon the Commission to issue notice to persons who are liable to be prejudicially affected, and permits parties interested in the result of the inquiry also to appear, adduce evidence and cross-examine witnesses. The Commission is to be mostly concerned with past or present circumstances as the terms of reference indicate. In view of all the above, the Commission performs predominantly a judicial function though the proceedings before it are not, in the strict sense, judicial proceedings so that the Commission may be bound either by the technical rules of evidence or codes of procedure or governed by limitations contained therein. Nevertheless principles of sound and salutary good sense embodied in

Indian Evidence Act or Code of Civil Procedure, in so far as they aid justice, should be followed as part of rules of natural justice. I, as the sole commission, therefore, decided to conform to rules of natural justice and all that are conceived and imported by that expression as the guiding principles in conducting this inquiry. All persons desiring to be heard have been offered that opportunity, all desiring any witnesses to be subpoena'd or documents to be produced have had their desires and wishes fulfilled. All the contesting or contending parties have been given full scope to state their respective cases and their views. Both in evaluating evidence and regulating the procedure the paramount consideration has been to maintain a judicial approach and to render justice to individuals against whom charges of criminal nature have been levelled, either as part of the terms of reference or otherwise. I have tried to see that rules of fair play are not infringed and I have tried to do my best to act justly and to reach just ends by just means. In coming to my conclusions, I have tried to remember the cardinal principles, so often repeated in judicial decisions, that no man is to be condemned on suspicion, that every finding of guilt must be backed by evidence and that circumstances relied upon for any finding must be of such character so as to unmistakably point to that conclusion.

16. I have not fettered myself by any technical rules of evidence and pleas. I have admitted materials and the evidence which from their very nature have appeared to me to be relevant to all facts in issue in this inquiry and which have appeared to me to have some probative value, either tending to establish any of the relevant facts or destroying the probability of any other fact in issue. Leaving aside for the time being the question of standard to be adopted in assessing the evidence and the principles to be followed in evaluating the same and in attributing the measure of weight to any particular item of evidence, I limited myself, while receiving evidence, by the provisions of the Commissions of Inquiry Act and the Rules framed thereunder, which left me completely unfettered by any technical rules of evidence, and also by questions of relevancy and probative value of each item of evidence offered.

(iv) Procedure adopted by the Commission:

17. After Government notification appointing me as the sole member of the Commission of Inquiry was published on the 28th March, 1968, I proceeded to employ the staff of the Commission from out of the High Court Staff, in consultation with the Chief Justice. Shri B. Chowdhury, the Joint Registrar, was appointed as the Secretary of the Commission specially because he had had adequate experience in the functioning of Commissions in the

past. A general notice was published in the local papers informing all who may concern themselves in the proceedings of this inquiry that my first sitting was to be held on Wednesday the 3rd of April, 1968. On this date, I commenced my proceeding in the Court-room, normally assigned to me as a Judge of the High Court. The whole Court-room was crowded, but I found that none was represented; not even the State. In this sitting I issued directions to the Secretary for publication of notice under Rule 7(1) (b) of the Orissa Commissions of Inquiry Rules, 1967, inviting all persons acquainted with the subject-matter of the enquiry to appear before the Commission on the date specified in the said notice. I also directed simultaneous issue of notices under Rule 7(1) (a) of the said Rules to Shri S. P. Mallik and Shri D. P. S. Chauhan personally and also through the I.G. of Police, Orissa, specifying the matters of inquiry concerning them and requiring them to appear either in person or through any lawyer.

18. A further direction was given for issue of notification under Rule 7(1) (b) of the aforesaid Rules in the local dailies. It appears that the said notification was published in the Samaj, Prajatantra, Matrubhumi, Janasakti and Kalinga, both in English and Oriya, and the copies of the said notification were also sent to the Home Secretary as also the Chief Secretary to the Government of Orissa, Secretary to the Orissa Legislative Assembly, Inspector-General of Police, all District and Sessions Judges, District Magistrates, Superintendents of Police, District Bar Associations, High Court Bar Association, Registrar, Orissa High Court; all Revenue Divisional Commissioners; Director of Public Instructions, Orissa, Registrars of Utkal, Berhampur and Sambalpur Universities; Principals of all Colleges; Presidents of Students' Unions of Medical Colleges at Cuttack, Berhampur and Burla and of other Colleges through their respective Principals, and Press Trust of India, All-India Radio, Cuttack, for giving wide publicity to the same so that persons acquainted with the subject-matters of inquiry may acquire information of this inquiry and may appear before the Commission, and furnish all necessary informations pertinent to the same.

19. The second sitting was held on 19th April, 1968, when the State appeared through Shri D. P. Mohapatra, Additional Standing Counsel, who submitted that the Government would file the documents referred to in the notification, along with some other relevant papers and some letters addressed to the Chief Minister in this regard and undertook to file four copies of each, within ten days. On this date, Shri S. P. Mallik appeared through Shri S. Mohanty, Shri D. P. S. Chauhan through

Shri J. K. Mohanty, Advocate of the Court and prayed for 15 days' time to file their respective affidavits, which was allowed. Dr. Minati Patnaik appeared through Shri Raghuman Patnaik, Bar-at-Law, and filed her affidavit as well as the affidavit of her husband, Shri Manoranjan Patnaik. The Editor, Printer and Publisher of Niakhunta appeared and filed a petition for 15 days' time to file his affidavit which was allowed. None appeared on behalf of the public or on behalf of the Students' Union and no affidavit was filed on their behalf. I issued a general direction that after all parties filed their affidavits, the Commission shall sit on the third of May 1968 to prescribe the procedure that it would adopt.

20. On the 3rd May 1968, the S. C. B. Medical College Students' Union and the Students' State Council of Action appeared through Shri D. Sahu and requested for time to file their affidavits and time was granted till 9th of May 1968. Shri Raghuman Patnaik filed two letters referred to in the affidavit of Dr. (Mrs.) Minati Patnaik which he had been directed to file on the request of counsel for Shri Mallik and Shri Chauhan. I also directed all parties appearing on this date to produce all documents relevant to inquiry which were in their respective possession by the next date without fail and I also directed the parties to file their list of witnesses whom they want to examine in support of their respective cases by next date, that is, 10-5-68. A further direction was issued to all parties to supply copies of affidavits filed by them to all other parties appearing in the proceeding, and to the Secretary to supply copies of the order-sheets to all counsel appearing in the proceeding.

21. On 10-5-68 affidavits were filed by the Editor, Niakhunta, S. C. B. Medical College Students' Union and by the State Council of Action, by Shri Banamali Patnaik, father of Dr. (Mrs.) Patnaik. The Editor, Niakhunta, enclosed with his affidavit photostat copies (M.Os. 1 & 2) with blocks (M.Os. 3 & 4) along with a copy of the February issue of Niakhunta Magazine, (M. O. 5). The Editor's affidavit was laconic and was not illuminating in regard to the source from which he received the photo copy of the letter referred to as M. Os. 1 and 2 in his affidavit and as to the whereabouts of the original of the letter to which M. Os. 1 and 2 related. He was accordingly directed to file supplementary affidavit disclosing the source of M. Os. 1 and 2 and his knowledge regarding the whereabouts of the original letter. He was also asked to disclose in his supplementary affidavit the materials on which his first verification in the first affidavit was founded. The Additional Standing Counsel for the State who had been directed to file four documents

specified in the order-sheet, claimed privilege in regard to the report of the I.G. (Vigilance) and also in respect of the petition of Shri G. S. Das and others on the ground that it contained many other matters which were extraneous to the subject-matter of inquiry. On objection being raised by other counsel to this stand of the State, I directed the Standing Counsel to file those documents under a sealed cover. Shri D. Sahu appearing for the Students' Union represented that he could not produce certain documents which he intended to do along with his affidavit, and accordingly time was granted to him to file those documents by 24th of May, failing which the documents were not to be accepted. Shri Raghunani Patnaik for Dr. (Mrs.) Minati Patnaik represented that his client is in the advanced stage of pregnancy and that it was desirable to record her statement as soon as possible. So by agreement of parties, it was fixed that her deposition will be recorded on the 24th of May, 1968. As a last chance time was extended till 24th of May, 1968, for acceptance of further affidavits, subject to this proviso that affidavits may be entertained if sufficient cause was shown for the delay.

22. All affidavits and counter-affidavits of parties who participated in this inquiry throughout and all affidavits of witnesses who have deposed and the affidavit of the Chief Minister were filed within the prescribed time. The one exception was that of Shri H. K. Ray who had been noticed in the midst of inquiry as I found that his reputation was likely to be prejudicially affected by my findings.

23. Of the numerous documents filed in this case, some have been voluntarily filed by parties and witnesses and some have been produced being called for.

24. Privilege was claimed by the State in respect of some documents which they produced under my order. The question of privilege has been disposed of by separate order which forms an *Annexure I* to this report.

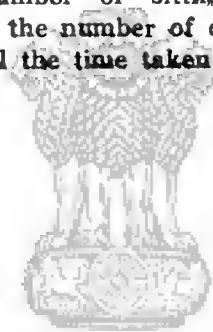
25. The Editor of Niakhunta similarly raised an issue of privilege in regard to whether he shall be compelled to disclose his sources of information and that question has also been dealt with by a separate order which is also an annexure to this report (*Annexure II*).

26. Shri Manoranjan Patnaik sent a counter-affidavit from West Germany which was filed here by Shri Raghunani Patnaik, his counsel, but objection to its reception has been taken on the ground that it cannot be deemed to be an affidavit within the meaning of any Indian Law.

27. Issues set out interrogatories to Shri Manoranjan Patnaik and Germany for his answer, which he has sent back duly answered and sworn to before some German authority. Objection has also been taken to its reception.

28. These technical objections are not of any consequence since no reliance is going to be placed on them for arriving at findings on relevant issues. Similarly objection against user of Manoranjan's first affidavit on the ground that he has not made himself available for cross-examinations, has been taken. But that was a regular affidavit duly made in India, and there was no legal bar to its user, particularly as he is not available in India and as his attendance cannot be procured without unreasonable delay and expense.

29. An order-sheet has been regularly maintained of this proceeding in which all the aforesaid facts have been recorded. It will show the number of sittings held, the number of witnesses examined, the number of days occupied in hearing on privilege matter and the time taken in final hearing.



CHAPTER II

(I) Participants in the Inquiry:

30. Five separate parties participated in this inquiry. They are: (1) The State; (2) Shri S. P. Malik; (3) Shri D. P. S. Chauhan; (4) Student's Union representative; and (5) Shri K. C. Mitra, Editor, Niakhunta.

31. Government adopted a neutral attitude during the evidence stage of the inquiry, but complied with my directions to produce documents in the custody of their officers and to render such help as I required from them from time to time. The State declined to adduce any oral evidence or to cross-examine any witness.

32. The two officers, viz., Shri S. P. Malik and Shri D. P. S. Chauhan were mainly concerned with the allegations set out in Government notification constituting the Commission. The Editor of Niakhunta, was interested in all the matters of reference. The notification recites that the Students' Union of as many as ten colleges including those of the Medical Colleges at Cuttack, Berhampur and Birla took part in the agitation; ultimately the Secretary of S. C. B. Medical College Students' Union, Shri Sudhakar Nanda, has appeared, filed his affidavit. His affidavit ostensibly indicates his interestedness in all matters of reference.

33. In course of this inquiry, I have complied with the request of Shri Malik and Shri Chauhan in matters of summoning witnesses, calling for documents, sending the disputed letter for the opinion of the handwriting expert and in the matter of fixing the order for cross-examining witnesses appearing before me. I have allowed Shri Malik the last place to cross-examine the witnesses in deference to the wishes of his counsel who based his request on a very intelligible ground, viz., since the other parties appearing and cross-examining the witnesses were antagonistic to his interest, he must be given the chance to cross-examine them after all facts are brought out against him through the cross-examination of others. Normally, therefore, I permitted Shri Chauhan and Shri Malik to cross-examine the witnesses last in the order. I also conceded to their request that the charges against them being criminal in nature, they shall be examined only after all other witnesses have deposed pertaining to matters having a bearing on those charges.

34. There was one prayer, however, of Shri Mallik which I could not grant. He prayed that Shri Manoranjan Patnaik should be summoned and be available for cross-examination. Shri Manoranjan Patnaik had left India for Germany for some specialised training or for some higher studies in Engineering sometime in April last. His counsel Shri Raghuman Patnaik after ascertaining the wishes of Shri Manoranjan Patnaik stated that he was willing to come, provided the expenses of his journey to and from India are met. The amount of such expenses, on computation, was found to be about Rs. 8,000. The Government was not willing to deposit this amount and none of the parties was in position to provide the same. His attendance could not, therefore, be procured without an amount of delay or expense which under the circumstances of the case appeared to me to be unreasonable.

35. During inquiry, it became manifest that one of the defences of Shri Chauhan was that he had, in course of discharge of his official duty as the Additional S. P., Rourkela, had antagonised one influential person of Rourkela, viz., Shri H. K. Ray, who, it is said, is related to the ex-Home Minister Shri Nilamani Routroy and it is at his instance that there has been a spate of agitation against Shri Chauhan at Rourkela and he suspected that he is instrumental in composing the false letter, photographing the same and distributing it widely to different people. Hence he being a person who was likely to be prejudicially affected by my findings, was noticed to appear and have his say if he so liked. He appeared through his counsel Shri D. Sahu long after service of notice on him, and thereafter took inordinately long time to file his affidavit. He, however, filed a medical certificate and explained the delay on grounds of health and that matter has been dealt with by a separate order and the affidavit has been accepted.

36. The total number of witnesses examined was thirty-four. Shri Mallik has been examined twice so also Shri D. P. S. Chauhan. Their second examination took place as they desired to avail themselves of the opportunity which I afforded to them to admit or deny certain facts, apparently antagonistic to their respective cases, which were deposed to by Shri S. K. Ghose, I.-G., Vigilance, who was summoned on an application made by Shri D. Sahu, after closure of the examination and cross-examination of those two police officers.

(ii) Terms of Reference— an Analysis:

37. The Government notification constituting the Commission of Inquiry already quoted in full, has set out the matters

for inquiry. The first term of reference is whether the allegations set forth in the first para. of the preamble are true and correct. This is divisible into the following issues :

- (i) Whether Shri S. P. Mallik and Shri D. P. S. Chauhan did outrage the modesty of an Oriya lady house-surgeon, who, in this case, is admittedly Dr. Smt. Minati Patnaik, while travelling in the Rourkela-Cuttack Deluxe bus during the night of 27th December, 1967;
- (ii) Whether Shri S. P. Mallik did address a letter to Shri D. P. S. Chauhan on 30th December, 1968, making a reference to the bus-incident and casting serious aspersions on the moral standards of Oriya girls in general and girl-medical students in particular.

38. The second term of reference is to find out the circumstances leading to the agitation thereon. The three paragraphs of the preamble to the notification refer to certain agitation carried on by different classes of people at different times and on different levels of society, which centred round the allegation of outranging the modesty of an Oriya girl and the alleged writing of the letter by Shri S. P. Mallik to Shri D. P. S. Chauhan casting serious aspersions on the moral standards of Oriya girls. The material paragraph of the preamble of the notification is as follows :

"WHEREAS this matter has been agitated in the Orissa Legislative Assembly by means of a Call Attention Motion on the 13th March, 1968, and an Adjournment Motion on the 22nd March, 1968 ;

WHEREAS the Students' Unions of the Medical Colleges at Cuttack, Berhampur, and Burla by issue of a notice to the State Government, dated the 21st March, 1968, and the Students' Unions of as many as ten Colleges by a similar notice dated the 24th March, 1968, have also demanded an inquiry into the matter....."

39. The bus-incident took place on the night of 27th December, 1967. The agitation referred to in the notification commenced sometime in the second week of March, 1968, and continued up to 27th March, 1968, and as evidence shows subsided only on the Government agreeing to appoint a Commission of Inquiry and actually issuing the notification on the 28th March, 1968, appointing the Commission. The Government obviously want to be informed about the circumstances which whipped up the belated agitation over the allegations specified in the notification.

40. I propose to deal with the subject-matter of inquiry in the following order devoting a separate chapter to each topic. The first topic for consideration would be whether Shri D. P. S. Chauhan did outrage the modesty of Dr. Smt. Minati Patnaik on the night of 27th December, 1967, while travelling in the aforesaid public bus. The second topic would be if Shri S. P. Malik had outraged the modesty of the Oriya lady in the Rourkela-Cuttack bus during the journey on the 27th/28th December 1967 which is the same as issue No. 1, and the third topic would be whether Shri S. P. Malik wrote the letter on the 30th of December 1967, to Shri D. P. S. Chauhan, a photocopy of which has been published in Niakhunta, and the fourth and the last topic would be the circumstances leading to an agitation the central theme of which was the allegation against the two police officers.

(iii) Principles of Evaluation and Appreciation of Evidence :

41. Counsel for Mallik and Chauhan devoted a substantial part of their arguments to this aspect. A large number of decisions were cited both of the Supreme Court and other High Courts to show how the evidence in present inquiry is to be assessed and evaluated. The Supreme Court has classified witnesses into three categories, viz., (1) Those who are fully reliable; (2) Those who are partly reliable and partly unreliable; and (3) Those who are completely unreliable. It is therefore quite pertinent to contend that the witnesses have to be classified and categorised and thereafter their evidence is to be evaluated.

42. The witnesses falling under the second category cannot be rejected outright, but weight is to be given to their evidence according as any part of their evidence is either corroborated or contradicted by other unimpeachable evidence on record. In view of the experience that the evidence of a witness is usually found to be fringed or embroidered by exaggerations, and even at times by false-hood, it is always to be kept in mind that the evidence of such witnesses is not to be discarded altogether by reason of the peripheral inaccuracy or falsehood, if the mind is satisfied about the truth lying at the core of evidence. Of course, where the admixture of falsehood is so glaring as to utterly destroy the confidence in such witnesses, then that particular witness has to be discarded altogether. It is also not safe to assume, as has been held by the Supreme Court relying upon a decision of the Privy Council, that a case must be false because some of the evidence in support of it appears doubtful or clearly untrue, and every effort should be made to discover the core of truth of the evidence and separate the grain from the chaff. As has also been recognised by the Supreme Court,

having these principles in the background of one's mind, it must be presumed always, whenever any witness comes to box for the purpose of deposing to the truth of facts in issue, that he tells the truth. Inaccuracies and exaggerations in his evidence, if found out, shall not always be promptly related to the conclusion that the witness is a liar, but may be considered infallible departures normal in a human being when he is deposing to a fact which occurred either some long time back or having regard to the nature of the fact in relation to which he is deposing he is unconsciously influenced by his personal sympathies for some or his antipathy against others. No hard and fast rule can be laid down which can be applied like mathematical formula.

43. It has been contended that the principles of burden of proof applicable to criminal trials is to be applied here, and the allegations against the two I. P. S. officers being criminal in nature, they must be proved beyond all reasonable doubt, as otherwise a finding of innocence must be returned. This contention, however, is not fully correct. This a fact-finding inquiry with the sole object of informing the mind of Government with regard to matters under reference. There is no prosecutor, there is no accused in this proceeding, and my finding is not a judgment which can be enforced *proprio vigore*. My report would entail no punishment. I am merely to offer my findings as to the existence or non-existence of matters under reference on the materials before me.

44. I have tried first to evaluate the evidence with a detached objectivity and then tried to base my conclusions regarding the truth or otherwise of relevant facts on such evaluated evidence as appeared to me to be *unimpeachable* and also on irresistible, compelling circumstances appearing therein.

(iv) Principal Witnesses :

45. Thirty-four witnesses have been examined, a list of which is appended hereto as *Annexure III*. Of them, twelve persons were in the bus where the incident took place, on the night of 27th December, 1967. They are :

P. W. 1—Dr. Mrs. Minati Patnaik

C. W. 4—Gopal Chandra Behera, Conductor

C. W. 6—Narottam Swain, Driver

C. W. 7—Dambarudhar Behera, Driver

C. W. 8—Yudhisthir Behera, Cleaner

P. W. 19—Debi Prasad Mohanty, Geologist, H.S.L.

- C. W. 24—Sibdhan Banshal, a businessman of Rourkela
- C. W. 25—B. K. Chada, co-passenger
- C. W. 28—Maharaja Krishna Chada
- C. W. 29—D. P. S. Chauhan
- C. W. 30—S. P. Mallik
- C. W. 31—Umakanta Biswal, Police Sub-Inspector

These form one group of witnesses. The second group would be those to whom the lady disclosed the incident immediately after she reached Cuttack or has narrated the incident on being questioned. They are :

- M. W. 2—Her late father B. Patnaik
- P. W. 33—Dr. Sarat Chandra Misra, a retired Professor of Medicine, S. C. B. Medical College.

The third group of witnesses are, those who inquired secretly into the bus incident before any agitation in relation thereto either by the press or by the students took place. They are :

- C. W. 32—Shri S. K. Ghosh, the I.-G of Police, Vigilance
- M. W. 12—Shri K. Rajgopalan, the D.I.-G., Vigilance, Police.
- P. W. 22—Shri Nityananda Kanungo, a Vigilance Inspector.
- P. W. 20—Shri K. C. Misra, Editor, Niakhunta

46. The fourth group comprises Official witnesses who were in charge of administration of the district of Sundergarh, particularly of Rourkela, where some part of the agitation took place. Some of them were associated with the enquiry into the bus affair and the genuineness of the photography of the letter (Ext. 50/a). They are :

- C. W. 5—Shri S. C. Misra, S. P., Rourkela
- C. W. 10—Shri P. M. Mohapatra, Addl. Dist. Magistrate Rourkela.
- C. W. 11—Sri H. N. Dasmohapatra, ex-District Magistrate.
- C. W. 16—Shri Seetakanta Mohapatra, the present District Magistrate, Sundergarh.

47. The fifth group comprises officers of the postal department. C. W. 9 Shri R. N. Panda is the Inspector of the Plant Site Police Station, Rourkela, who investigated the criminal case instituted by Shri D. P. S. Chauhan against the Editor of Niakhunta and also enquired into the genuineness of the signature on the petition purported to have been sent by one G. S. Das and others (Ext. 8/1).

48. The last group consists of only one witness, namely, C. W. 34, who is Shri H. K. Ray.

49. Voluminous documentary evidence have been produced. These are intended to prove the following facts, namely, (i) The alleged enmity between Shri D. P. S. Chauhan and Shri H. K. Ray; (ii) The genuineness of Ext. 50A, the letter supposed to have been written by Shri Mallik to Shri Chauhan; (iii) the decision of Mrs. Minati Patnaik and her husband to drop the matter and not to prosecute any further steps in that connection; (iv) The secret inquiry by the Vigilance and the finding of I.G., Vigilance; (v) The difference between the Chief Minister and the Deputy Chief Minister in regard to the forum of departmental inquiry, and the preliminary suspension of the two concerned officers; (vi) The agitation in the press and in the Legislative Assembly; and (vii) The agitation by the students and their ultimatums to the Chief Minister.



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CHAPTER III

(I) Outraging of Modesty by Shri D. P. S. Chauhan : Contentions Advanced :

50. This charge is contained in the Government notification and constitutes one of the terms of reference. It has presumably been formulated on the basis of various informations lodged with the Government from diverse sources. The Government filed *suo motu* some documents relevant to the enquiry. Some other documents were also placed before me being called for. The detailed story of the alleged misconduct appears from a petition signed by one G. S. Das and 22 others and sent to the Government. Copies of this petition accompanied by photograph of a letter supposed to have been written by Shri Mallick to Shri Chauhan appear to have been widely distributed. A copy of this petition and the photographed letter have also been filed by the Editor of Niakhunta. He states to have received the same on 26th of February, 1968. The report of I.-G., Vigilance and notings thereon (Ext. 50) show that this petition of G. S. Das and others and the photographed letter had reached the hands of the Government by 27-2-68.

51. The narration of the story of bus-incident in this petition of G. S. Das (Ext. 8/1) is a detailed one. The identity of the outraged lady and her husband has been disclosed. The names of the drivers, conductor and cleaner of the deluxe bus in which the incident occurred have been stated. The arrangement and the numbering of the bus seats have been graphically shown, seats originally reserved and allotted to the two concerned police officers and to the lady have been indicated, but in this respect it suffers from some errors. The lurid details of the two officers moving to the rear seats of the lady and sneakingly molesting her in the dead of the night in the moving bus have been nakedly set forth. The story proceeds to recount how the lady got enraged and assaulted both the officers and her frenetic outburst at them. The I.-G., Vigilance, in his report (Ext. 50), submitted to the Government, of his secret inquiry gives a different version of the bus-incident. He implicates only Shri Mallick in the actual crime of outraging the modesty of the lady doctor. Shri Chauhan is attributed the comradely act of subsequently negotiating with the husband of the lady for dropping all further action thereby burying the episode. The outraged lady gives her version to her husband in her letter dated 28-12-67 (Ext. A). This letter is a written

exoneration of Shri Chauhan from any participation in the crime. All that is ascribed to him is his intervention pacifying her and assuring her that he will relate the entire incident to her husband. None of the other bus-passengers who have been examined, incriminate Shri Chauhan. The lady doctor, Shrimati Minati Patnaik, in para. 12 of her affidavit designates Shri Mallick as the main culprit who deliberately and intendingly outraged her modesty, but adds that Shri Chauhan assisted, connived and abetted his companion. In para. 2 of her second affidavit, she repeats her charge of abetment against Shri Chauhan and imputes collusion from his subsequent attempt to suppress the truth of the crime and evasion to supply her with the name of Mallik. At page 3 of her deposition, Shrimati Minati Patnaik says that she has not seen at any time that night Shri Chauhan sitting by the side of Shri Mallick behind her back. Thus, in her evidence Shri Chauhan is not the person who outraged her modesty. There is no other evidence involving Shri Chauhan.

(II) Conclusion

52. It must accordingly be held that Shri Chauhan did not himself use any criminal force to or assault the lady doctor and so the question of outraging her modesty does not arise. There is also no evidence that he attempted to do any overt act which would amount to the same offence.

(III) Did Shri Chauhan Abet ?

53. The next question is whether Shri Chauhan played the role of an abettor. Abetment by Shri Chauhan is not explicitly a matter of reference, but as in the legal conception, abetment of an offence in certain circumstances, makes the abettor the principal in the second degree and exposes him to the same liability and the same punishment as the actual perpetrator of the crime, it is argued that the term of reference would attract the question of abetment also.

In Indian law abetment comprises acts done, either prior to, or at the time of perpetration of a crime, or doing of a criminal act. This more nearly corresponds to what is known as accessory before the fact in English law.

54. The conception of 'accessory after the fact' involves passive concurrence with an act which is criminal in nature. This is not 'abetment' as defined under section 107 of the Indian Penal Code. But this conception is not quite foreign to Indian Criminal Law. In fact, the 'accessory after the fact' is treated

in scattered sections of Indian Penal Code like sections 52-A, 212, 260, 130, 136, 137 and 410 to 430. In these sections, each incorporates a separate and specific act, constituting an offence, none of which is alleged to have been committed by Shri Chauhan in the terms of reference submitted to me.

55. As regards abetment in the sense of 'accessory before the fact,' it is defined in section 107 of the Indian Penal Code. To implicate successfully Shri Chauhan as an abettor, the following elements must be proved, namely:—

- (a) He instigated Shri Mallick or,
- (b) He engaged himself with Shri Mallik in any conspiracy to outrage the modesty, or
- (c) He intentionally aided in outraging the modesty, or
- (d) Voluntarily caused that act to be done by wilful misrepresentation or wilful concealment of a material fact, or
- (e) Did anything in order to facilitate the commission of the offence of outraging the modesty either prior to, or at the time of commission of such etc.

None of these elements has been proved in this inquiry either directly or circumstantially.

(iv) Conclusion :

56. I am quite satisfied that there is neither any positive evidence, nor any uncontrovertible circumstance which unmistakably points to Shri Chauhan as having abetted the offence alleged to be committed by Shri Mallik, in the sense in which abetment is understood in Indian law.

CHAPTER IV

(i) Did Shri Mallik outrage the modesty of the Oriya Lady House Surgeon ?

57. The offence of outraging the modesty of a woman is contained in section 354 of the Indian Penal Code. It is in that sense that I propose to discuss the evidence. Accordingly, it is appropriate to set out the section and a few principles which have been judicially built up thereon, as a prelude to the study and scrutiny of evidence:—

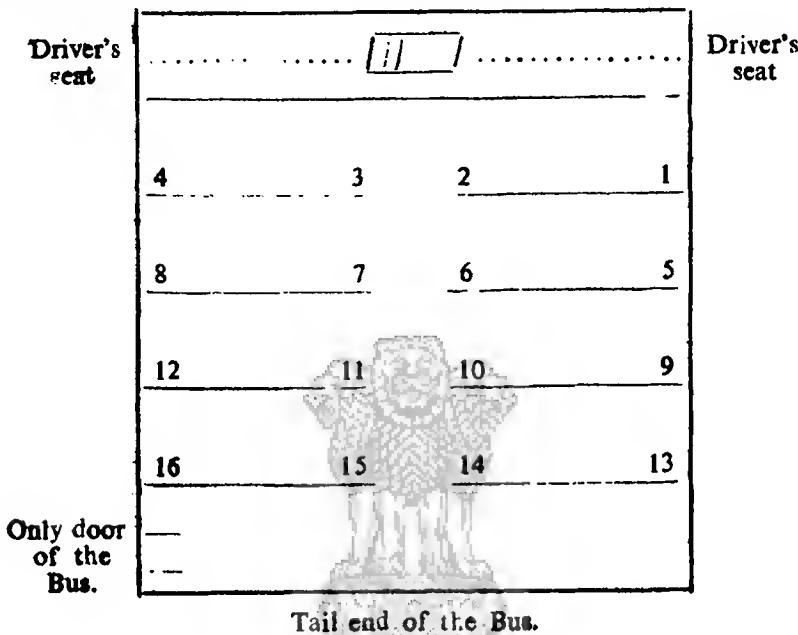
"Section 354 says—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both."

58. It has been laid down by the Supreme Court in the case of State of Punjab—v—Major Singh that any act done to a woman which is clearly suggestive of sex as is commonly understood, falls within the mischief of the section. One learned Judge in that case proceeds to analyse the conception of 'Modesty' of a woman in these words:

"I think that the essence of woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter. *The reaction of the woman is very relevant*, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.....In this case the victim is a baby seven and half months' old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex."

At this stage, it is necessary to give a brief description of the place where the occurrence took place and also to draw a diagram of the seating arrangement within the bus. This will be helpful not only to appreciate the evidence of witnesses, but also to gauge their relative competency.

Diagram and the Seat Chart in the Deluxe Bus :



59. The numericals indicate the numbers borne by the seats in the bus. There is a glass panel partition in front of seats 1 to 4 separating the driver's cabin from the rest of the bus.

60. I held an inspection of the in presence of the two I.P.S. Officers, editor of Niakhunta, Shri S. Mohanty, Advocate for S. P. Mallik, Shri D. P. Mohapatra, Additional Standing Counsel. Various measurements were taken which were deemed relevant for proper understanding of the evidence by counsel of the parties. A memorandum of the inspection and of an experiment carried out inside the bus has been prepared. The experiment was to find out if a person sitting on seat No. 9 could introduce his hand through the opening between seat No. 5 and the bus body at its immediate right and touch the person occupying seat No. 5. There were two such openings, one at the place where headrest projected from the backrest and the other at a height of 1 foot from the bottom of the backrest. The experiment was tried through the second opening.

and I was satisfied that the body of the person sitting on seat No. 5 was accessible to a person of Mallik's size from seat No. 9 if he leaned forward. The memorandum is annexed to this report as Annexure IV.

(ii) Story as told by Principal persons

61. Seat No. 1 was occupied by Shri D. P. Mohanty, Geologist (P. W. 19), seat No. 2 by Shri Shibdhan Bansal (C. W. 24), seat No. 3 was occupied by Shri Mallik (C. W. 30) up to Sambalpur who then shifted to seat No. 9. Shri Chauhan (C. W. 24) was seated on seat No. 4, the lady, Mrs. Minati Patnaik (P. W. 1) occupied seat No. 5, seat No. 6 was occupied by a child, Shri B. K. Chada (C. W. 25) was seated on seat No. 7 and his father Shri M. K. Chada (C. W. 28) was seated to his left on seat No. 8. seat No. 13 was occupied by Shri Umakanta Biswal, S.I. of Police (C. W. 31) seats Nos. 17 and 18 were occupied by the Conductor (C. W. 4) and Cleaner (C. W. 8), respectively.

Lady's Story :

She (Minati Patnaik) boarded the bus at Sector 2 bus-stand along with her husband who was keeping her company up to Rourkela bus-stand. She occupied seat No. 5 from beginning till the end of her journey. It is at Rourkela bus-stand her husband got off the bus and Shri Chauhan boarded it. It is there that both of them, that is, her husband and Shri Chauhan met and due to prior acquaintance wished each other. Her husband introduced her to Shri Chauhan and requested him casually to look after her convenience during the journey. A little after midnight when the bus was plying between Rairakhol and Angul, she was sleeping leaning against the seat. Beside her, on seat No. 6 was a small girl. She felt disturbed and shock by touch of a human hand on the flesh of her belly and became wide awake. The hand which gave the touch was then withdrawn. She then moved towards the window side of her seat and remained alert and watchful. After a lapse of about five minutes, she felt the manual touch once again on the flesh of her belly below her right brest. There was no longer any doubt in her mind about the immoral intention and immodest suggestion of that touch. She firmly caught hold of that offending hand which had been stretched towards her through the side opening between her seat and the bus-body by Shri Mallik, sitting behind her, stood up and gave a few beatings with her slipper on the head of Shri Mallik. Simultaneously, she poured forth a stream of abuses at him. She also shouted out for the bus to stop. The bus was brought to a sudden halt and all lights were switched on. She then demanded

to know the name of the miscreant who was Shri Mallik. Nobody came forward to furnish the name. It is at this time Shri Chauhan stood up from his seat and tried to pacify her by saying that he knew the name and would disclose it to her husband. She, therefore, sat down on her seat and Shri Mallik moved to seat No. 3 which he had previously occupied at the commencement of the journey. At Cuttack, when the two officers were getting down at the Buxibazar bus-stop, she again asked Shri Chauhan to tell her the name, but Shri Chauhan again avoided by reiterating his assurance to disclose the name to her husband. She was very much upset and frightened and noticing her condition, the conductor diverted the bus from its normal route and proceeded via Gourisankar Park to Chandinichowk terminus. She got down at Gourisankar Park to go to her father's house at Oriya Bazar nearby. While she was getting down, the driver and the conductor expressed their helplessness in dealing adequately with the situation as the culprits were high-ranking police officers, but the conductor promised to report the matter to his superiors who will take suitable action and communicate the result to her. The first thing she did on reaching home was to relate the incident to her father (M.W. 2) and also wrote to her husband a letter (Ext. A) about the incident.

Mallik's Story :

62. He got on the bus at Sector-2 bus-stand. Seat No 13, which is a side-seat had been reserved for him through Township Police Station, Rourkela. He learnt there that Shri Chauhan was also travelling in that bus and that seat No. 4 had been reserved for him. He, thereupon, requested the senior station master of Sector-2 bus-stand to allow him to sit beside Chauhan in seat No. 3 and to allow him a side-seat later on when he felt sleepy. He came in seat No. 13 up to old Rourkela bus-stand where he got down and saw Chauhan. Then both of them boarded the bus and sat side by side, he on seat No. 3 and Shri Chauhan on his reserved seat. He moved to seat No. 9 to the rear of the seat occupied by the lady at Sambalpur and slept. He felt a sensation of insect bite behind his back and suddenly stood up to see what it was. Then he lost his balance as the bus was in motion and in the process tumbled on Mrs. Patnaik who was sleeping in a leaning posture on seat No. 5. Then he stood up immediately and begged her pardon by saying "sorry please excuse". This was followed by sudden violent reactions of the lady who suddenly got up and beat him with her chappal leaving him stunned, bewildered and flabbergasted. He then simply requested her to control herself. The conductor stopped the bus and he moved to seat No. 3 beside Shri Chauhan. The lady then wanted to know his name and

address from the conductor. Shri Chauhan intervened and told her that she should not be worried as he knew Mallik and his address. He recounted to Chauhan in the bus how he accidentally tumbled on her. On reaching Cuttack, he requested Chauhan that on return to Rourkela, he should tell the lady's husband the circumstances under which he had been unjustly beaten and insulted. Subsequently, on 30-12-67 he learnt from Chauhan over phone that the lady's husband had been apprised of the true circumstances of the incident and had apologized for his wife's conduct and requested that the matter may be forgotten and treated as closed. Consequently he desisted from taking any action against the lady.

Chauhan's version :

63. He has admitted meeting Manoranjan Patnaik the husband of the lady at old Rourkela bus-stand. He further says that at that bus-station, Manoranjan pointed out his wife who was standing a short distance away from him and told him that she was also travelling to Cuttack in the bus. He saw Mallik occupying seat No 9 at Sambalpur and as the bus left Sambalpur town the bright lights were put off. Then he slept. He woke up from his sleep when suddenly the bus stopped somewhere between Rairakhol and Angul and saw Mrs. Patnaik and Mallik standing in front of their respective seats. He also noticed Mrs. Patnaik demanding Mallik's identity in an angry mood and Mallik stunned and speechless. Then Mallik came away and sat in seat No 3 as suggested by the conductor. He then told the lady that he knew her husband and the gentleman whose name she was demanding to know upon which she clamed down. Later on, in the bus, he gave the identity of the lady to Mallik on being asked for and also informed him that her husband was an employee in Kalinga Otto Firm at Rourkela. He also says that Mallik told him that "he was unable to maintain his balance while suddenly trying to stand up from seat No 9 and then by accident had tumbled over that lady" and had, in consequence been beaten even though he expressed his regret. In reply to such disclosure, he told Mallik that he knew the husband and would speak to him. At Cuttack, when he was getting down from the bus, the lady reminded him to inform her husband. There was more conversation about it between him and Mallik later on when insect-bite theory was mentioned as the cause of accidental tumbling down. He being junior to Mallik did not ask him anything else. He left Cuttack for Rourkela on the evening of 28-12-67. He had a talk with Shri Manoranjan Patnaik on 30-12-67 where he narrated Mallik's version of the incident, whereupon Manoranjan asked him to request Mallik to forget and forgive and to close the episode. He

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denies the allegation that he refused to disclose the identity of Mallik and that Manoranjan having discovered the name of Mallik from independent source confronted him over phone on 2-1-68 and got an admission from him that it was really Mallik who had been involved in the bus incident. These are broadly the facts stated by him in his affidavit dated 3-5-68 relating to the bus incident and its sequel.

64. Thus, it is seen from these three versions that some incident admittedly took place inside the Rourkela-Cuttack Public Bus during the night of the 27th December, 1967, and that Shri Mallik had physical contact with the lady. The difference between the lady and Shri Mallik is with regard to the manner and the location on the lady's person of such contact and as to whether such contact was motivated or unintentional caused by accident. The main question, therefore, is which of these two differing versions is true and correct.

65. Before proceeding further, I must set out the significant variations between the stories told by the two officers in their respective affidavits dated 3-5-68 and important omissions therefrom.

(III) Significant Variations and Omissions :

66. According to Shri Chauhan, Shri Mallik did not apprise him in the bus about the insect bite sensation being the prime cause of his tumbling down but gave him the bare story of his trying to stand up and losing his balance and thereby tumbled over the lady. The insect bite story was for the first time told to him at the I. P. S. Mess. Shri Mallik, however, does not disclose in his affidavit that he told Shri Chauhan about the insect bite at all, either in the bus or at the mess. This is a material omission amounting to serious contradiction and creates a reasonable doubt that the insect bite theory is a subsequent development, particularly when this is the substantive defence of Shri Mallik. Then again, there is difference between the two versions as to why Shri Chauhan sought out the lady's husband at Rourkela and told him about the bus incident. Shri Chauhan only says that the lady had asked him at Cuttack to inform her husband and stated nothing about Shri Mallik having made any such requests to him. On the other hand, Shri Mallik's specific case is that he had requested Shri Chauhan to inform Shri Manoranjan the circumstances under which he had been unjustly beaten and insulted. There is absolutely no corroboration of this specific case of Shri Mallik in Shri Chauhan's affidavit.

(iv) Defence Contentions :

67. Before elaborately dealing with the oral, documentary and circumstantial evidence, I must set out briefly the contentions advanced by the learned counsel of Shri Mallick. Their case is this :

Shri Mallik accidentally tumbled over the lady when being bitten by an insect or getting insect bite sensation at the back, he suddenly stood up and trying to locate the insect lost his balance. He had placed his right hand on the top of the headrest of the lady's seat and that hand slipped forward having lost his grip and his forehead struck the headrest when he tumbled. He immediately begged excuse. The lady assaulted in a fit of rage but subsequently realised that it might be an accident which caused her to lower the pitch of her voice. The realisation by her and her husband and that it might be accidental, made them drop the matter and that is why they did not take any action.

68. I will straightaway deal with one defence contention which on analysis, strongly militates against the insect bite and tumbling theory. Some part of this defence like striking his forehead against the backrest of the lady's seat was for the first time adopted by Shri Mallik in his oral evidence. Nobody supports him. He did not tell about it to Shri Chauhan. Having regard to the height of Shri Mallik, which he deposes to be 5' 6", striking of his forehead against the backrest is not possible, even if he tumbled down on the lady as he says. On the contrary, that is possible if the crouching position of Shri Mallik at the time of incident spoken to by B. K. Chada (C.W. 25) is accepted which I have done. If the forehead struck the backrest of the lady's seat his hand would slip tangentially upwards rather than downward, so as to come into contact with the lady's person. It is Shri Mallik's own statement that when the lady was reclining in her seat, no part of her head protruded above the headrest. So his forehead being on a level with the headrest, his right hand projecting from the shoulder will slip, if at all, it would slip forward, upwards and away from the lady. The defence of insect-bite theory will be dealt with in due course herein below while dealing with the evidence.

Shri D. P. Mohanty, Geologist : (P.W. 19)

69. He is a Class I Officer holding a job in the Hindusthan Steel Ltd. He occupied seat No. 1 just to the front of the lady. He is a post-assault witness. The bus stopped on demand of the

lady Minati Patnaik. He heard her shouting abuses at somebody whom he could not then spot out. He saw, sometime after, Mallik moving from seat No. 9 to his original seat No. 3. The lady said many things most of which has become blurred in his memory except the peremptory demand of the lady for the name of Mallik, which he distinctly remembers. He heard Chauhan trying to pacify her by telling her that he knows her husband and will tell him. At Buxibazar, Cuttack, he heard the lady requesting Chauhan to contact her husband at Rourkela and to tell him about the incident. After the bus left Buxibazar, he heard the lady telling someone in the bus about the outrage committed on her fragments of which he was able to overhear.

70. In his evidence before me, he asserts that Chauhan had called on him sometime in April 1968, and wanted to see his affidavit. He and Chauhan were unknown to each other and there was no sort of social intercourse between them as they belonged to completely different levels in society having no conceivable meeting points in normal times. For the first time, he came to know of Chauhan and his designation as a police officer at Angul bus-stand from general talk going round though there was no introduction between them there. So, when Chauhan called on him to see his affidavit, he immediately apprehended some sort of pressure from him to draft his affidavit in a manner which would be beneficial either to him or to his friend Mallik in the inquiry. To avoid unpleasantness which would have resulted from a blunt refusal to show his affidavit he resorted to diplomacy. He accordingly told Chauhan that he had already despatched his affidavit and had no copy with him. He was nearest to the place of incident and he did not hear any verbal protest from Mallik either in course of the lady's abuses or subsequently, that is to say, at any time since he woke up and began noticing things.

71. He frankly confesses that he is a shy person yet inquisitive. He being a witness of a part of the incident, the latter part, had his desire whetted to know about the earlier part of the incident. He had not the boldness to ask and yet eager to learn. So he strained his ears to catch snatches of conversations from talking groups of persons at Angul bus-stand which might throw light on what he wanted to know. He says:

"I heard Mr. Chada's son saying that he had seen the passenger in seat No. 9 (indentifying Mr. Mallik) withdrawing his hand from seat No. 5. He demonstrated the withdrawal with his own hand. Mr. Chauhan on hearing this merely shrugged his shoulders. Chada kept quiet."

Quite frankly he says that from the knowledge of the facts he acquired regarding the bus-incident during the course of his journey to Cuttack, he was convinced that Shri Chauhan was quite innocent. He also does not mince matters in candidly admitting that Manoranjan met him sometime after the news of constitution of the Commission appeared in newspapers, but before the publication of the notice by Commission. The purpose of Manoranjan's seeing him was to ask him to file his affidavit before the Commission. Asked as to why he did not mention this conversation between Chada and Chauhan in his affidavit, he admits that the same should have formed part of his affidavit and he actually thought so after he had despatched his affidavit by post to the Commission. It also occurred to him that the defect could be remedied by filing a supplementary affidavit, but he did not adopt this course as he could ill-afford the expenses and then he thought that if and when he is called as a witness he could state what he omitted inadvertently from his affidavit.

72. He appears to me to be a completely reliable witness. There is no tendency in him to gloss and no desire to conceal. He has no enmity with the I. P. S. officers and he has no friendship with Manoranjan. He filed his affidavit without reading Niakhunta, which means before there was any possibility of his mind being affected by the contents of the impugned letter. He has not hesitated to admit a few personal lapses, namely, that he deliberately avoided Chauhan to get rid of any possible pressure from him, that he is shy and that he tried to eavesdrop. He exonerated Chauhan completely in his mind from blame which indicates absence of bias. Many things could have been falsely incorporated in his evidence if he was minded to do so or to tender perjured and prejudiced testimony which could pass off as true, having regard to his competency acquired by the sole reasons of the nearness of his seat to the place of incident. This admission of his weakness gives strength to his evidence.

73. One significant fact proved in his evidence is that Chauhan hunted him up and wanted to examine his affidavit. This fact is not challenged by Chauhan and apart from providing other inferential implication, adds to the trustworthy character of this witness.

B. K. Chada (C.W. 25) :

74. He is the grandson (daughter's son) of ex-Governor of Orissa, Dr. A. N. Khosla. He was occupying seat No. 7 in the bus. Of all witnesses, he had the best positional advantage to get an unrestricted simultaneous view of the lady and Shri Mallik. He is the only witness who saw the entire incident. This is what he says :

"My father to my left was dozing. The child to my right was dozing, so also the lady. I noticed all of a sudden the lady wake up as if some mosquito or something had stung her. She then dozed off. After sometime, something again happened. The man behind the lady who was leaning forward seemed to be dozing. He had a Chaddar covering him. Second time when the lady woke up, the gentleman behind her sat straight against his seat. Both the time the lady woke up which appeared to be as if a mosquito had stung her. The gentleman behind her leaned against his seat. Third time the lady made such a motion as if trying to catch hold of something under her right arm-pit and immediately she picked up her slipper and struck the man behind on his head once or twice and started saying : "I am a married woman". She used some abusive words which I cannot recollect. Then the gentleman sitting in front of us (meaning Chauhan) said something to the lady. Of course, by this time, the bus had stopped and everybody had woke up.....

The gentleman sitting behind the lady did not utter a single word while he was being assaulted by the lady."

This is what he said on 5-8-68, the first day of his cross-examination. His cross-examination was partly conducted this day and was next continued on 13-8-68. On the second day of his cross-examination he said :

"Just before the bus-incident, I was feeling a little drowsy, but I was neither dozing nor I was awake.....

I saw the lady jerking thrice before the assault took place. I did not notice Mr. Mallik leaning forward against the back of the lady's seat at the first jerk, but I found him leaning against the lady's seat when the lady gave the second jerk. At the third jerk, I found Mr. Mallik in bending posture half standing raising himself from the chair. Mr. Mallik had raised his head above the top of the back of the lady's seat by about 6". During all the three jerks that the lady gave, it appeared to me that they were caused due to some external causes like mosquito bite.....

I would call the 'jerk' the lady gave as "startle". I did not feel any embarrassment on seeing the incident; but felt a feeling of embarrassment to discuss the matter with my father....."

"The lady was unusually furious. I had a talk with Mr. Mallik, at Angul bus-station regarding the incident.

I did not see Mr. Mallik tumbling over the lady at any time. To be able to tumble over the lady from the seat of Mr. Mallik which he was occupying at the rear of the lady's seat, he has to hand over the back of the lady's seat towards the lady. I did not see Mr. Mallik losing balance at any time but from the posture during assault, I thought that he was trying to regain his balance.

I never noticed Mr. Mallik startled or getting any jerk at any time during the time when I first saw the lady getting a jerk or being startled till the assault was over.

At Angul Mr. Mallik came out and was standing alone towards the tail of the bus and was smoking. I approached him for a match. When I approached near him, I recognised him to be the gentleman who was assaulted by the lady. Then I asked him what happened and who was the lady. He replied that he did not know the lady and accidentally he touched her and then he apologized but the lady was too quick in taking action. It was very unhappy incident. He said this much and did not talk more. I came back He certainly did not explain the situation publicly

If this evidence is believed, which I have no reason to discard, the story of insect bite and accidental tumbling over the lady must fall to the ground. On the second day of his examination, in reply to question put by the counsel for Mallik he says :

" During the assault Mr. Mallik said something when his face was downward. I cannot say the exact words. The sense of what he said was begging excuse or apologizing or something like that." This, does not militate against any part of his earlier statements and is quite consistent with the lady's story.

Gopal Behera (C. W. 4) :

75. He was the conductor of the bus in which the incident took place. He is a witness from and inclusive of the stage of assault. He found the lady in a very agitated condition and resentful. He has heard her complaining of the misbehaviour of Mallik towards her. The exact words uttered by her indicating Mallik's vile misconduct has been reproduced by this witness. The exact words are :

“ଦେଖ ହେ, ଏ ଅଭିମାନୀ ସଙ୍ଗରେ କେମିତି ଅଭିମାନୀ ବ୍ୟବହାର କରୁଛନ୍ତି । ଥରେ ସିନା ବାଇଗୁନୀସ ହାତ ବାକିଗଲ, ସେବେଣ୍ଟ ଟାଇମି ପୁଣି କେମିତି ହାତ ବାକିଲ । ”

This means : " Look here : How this ungentlemanly fellow is misbehaving with me. It may be that the first touch was due to chance, but how is it that he touched me for the second time."

This witness deposes that Mallik was completely silent throughout and did not declare his name even though asked for. He is the person who controls the movement of the bus during a journey. He also is the immediate official of the transport department to whom complaints are made by the passengers and who looks to their comfort, convenience, and safety. Finding the lady very much agitated and frightened, he enquired from her about the location of her residence and when he learnt that her house was near Gourishankar park, he diverted the bus and dropped her at the park. He confessed to her that he was overawed by the knowledge of the two officers including Mallik being high-ranking police officers, and felt helpless. He submitted a written report of the incident to the senior station-master of Sector-2 bus-station (Rourkela) on his return. He was questioned thrice by three separate officers at three different times before he came here to testify : Once by Vigilance Inspector, once by D.I.G., Vigilance and on the third occasion by the Inspector of Police, Plant-site Police Station. Nothing substantial has been elicited either in his evidence or otherwise to discredit this witness who in spite of his inferior official status inspires confidence.

Yudhistir Behera (C.W. 8) :

76. He was the Cleaner of the Deluxe bus on the night of the 27th December 1967. He has seen the assault on Mallik. He is a witness of the angry violent reactions of the lady and heard her making direct indictment of misconduct against Mallik. He has reproduced the very words of the lady as quoted in the evidence of the conductor, C.W. 4. He has deposed that the lady openly said that Mallik had pressed her breast by extending his hand. This statement, standing by itself, would appear to be a development, but read with his reproduction of lady's actual utterance, it would merely indicate his understanding of the implication of the utterance and reading of the situation.

M. K. Chada (C.W. 28) :

77. He is the Honourary Secretary of the Dayananda Anglo Vedic College Trust and Management Society, Orissa Branch. He is father of B. K. Chada (C. W. 25). He is a witness of the last part of the incident after the assault was over and proves the following facts : viz :—

- (a) The lady was terribly upset and visibly moved so also the passengers.

- (b) He felt that the lady was upset as if she had been teased by somebody.
- (c) Chauhan intervened to say, amongst other things, that misunderstanding will be cleared when they reached Cuttack.
- (d) Mallik was tongue-tied throughout till he came to the side of Chauhan and sat on seat No. 3.
- (e) It was evident from the manner in which the lady appeared to be upset that she was probably offended and must have been given some cause for being upset.
- (f) Mallik and Chauhan talked in a low voice sitting side by side after the incident.

78. It may be mentioned that for the first time in cross-examination after lunch interval this witness came forward to support the defence version of insect bite by saying : "Mr. Mallik said that some wasp or something had bitten him in the bus and he abruptly got up and tumbled or fell which was misunderstood for touching the body of the lady deliberately." He further says that "Mr. Mallik offered this explanation openly in the bus." This part of his statement does not find place in his affidavit and clearly appears to have been made to oblige Shri Mallik. None of the other witnesses who were in the bus supports this version. It is not even the case of Shri Mallik that he voluntarily offered this explanation immediately after assault and inside the bus.

Shibdhan Bansal (C.W. 24) :

79. This witness woke up after the bus had stopped. He is a business man of Rourkela against whom a criminal case had been instituted for smuggling rice and has reasons to be afraid of the police. He appears to have had a talk about his affidavit with H. K. Ray whose inimical disposition towards Chauhan has been well-established. It is safe to ignore his evidence.

Dambarudhar Mohanty (C.W. 7) :

80. He was driving the bus at the time of the incident at about 18 to 20 miles from Rairakhol towards Angul. He heard a commotion inside the bus and then he received a signal from the conductor to halt. He stopped the bus and then looked back into its interior through the transparent glass partition. He saw the lady standing in a very angry mood in front of seat

No. 5, and Chauhan talking to her in English from seat No. 4. It is thus evident that he missed the crucial part of the incident and his evidence has no value in determining the present issue in hand.

81. It is at this stage necessary to refer to three documents, namely, Ext. A, Ext. B, and the F. I. R. and the case-diary in Plant-site Case No. 125/68.

(i) (Ext. A) *Minati's letter to her husband*—This is written on 28-12-1967. It is normal and appropriate that she must inform her husband of her nightmarish experience at the first opportunity. Having gone through an emotional strain of anger and fear, and shame of outraged modesty, she would want mental solace by communion with her husband. She would desire to lighten her burden by placing her grief and sorrow in the hands of her husband. She did just that. In this context she would not embroider her story. She refers to Chauhan as 'her husband's friend' which bears out fully her averment in the affidavit that her husband talked to Chauhan in her presence at Rourkela bus-stand and pointed her out to him as his wife while requesting him casually to look after her during the journey. There was no introduction strictly in the formal western sense. So she did not know the designation of Chauhan at the time but what was told her by the driver later. This also corroborates the fact that Chauhan had undertaken the responsibility of relating the bus-incident to her husband. This bears out the conductor's evidence that the transport staff in the bus were cowed down by their awareness of Chauhan and Mallik being high-ranking police officers.

(ii) (Ext. B) *Manoranjan's letter*—This is the husband's letter dated 1-1-68 in reply to two letters of his wife including the one of the 28th December, Ext. A. The details of the bus-incident as told by Chauhan are not disclosed. Two facts, however, appear clear: (1) Chauhan was inducing Manoranjan not to take the matter to Court, and (2) he did not disclose the name of Mallik. This shows that Chauhan was attempting to make peace and not delivering an ultimatum from Mallik that he had been assaulted and insulted unjustifiably and unless suitable amend is made by him (Manoranjan) appropriate legal proceedings will be launched against his wife.

(iii) *First Information Report lodged at the Plant Site Police Station, Rourkela, by Shri Chauhan, against Editor of Niakhunta*—This first information was lodged on 23-3-68. It is registered under sections 153, 153-A, 469, 501, and 502 of the Indian Penal Code. It quotes the entire article "SATYA O

SANGHATIKA" and refers to the letter alleged to have been written by Mallik to Chauhan. The story of outraging the modesty of the lady is fully detailed in this article in which Chauhan and Mallik are pointedly impeached as perpetrators of that crime. The contents of the article as well as of the letter became directly the subject-matter of investigation. In course of investigation, Chauhan has been examined by the Investigating Officer, and so also the conductor and the driver of the deluxe bus who are respectively Commission Witnesses 4 and 7 in this inquiry. There is no reference to the bus incident at all in any of their statements recorded by the I.O. which is a very curious and suggestive omission. Not a single question appears to have been asked to any of them, if the lady's modesty had been outraged in the bus both by Chauhan and Mallik, or any one of them. The conductor, (C.W. 4) and the driver (C.W. 7) on the otherhand have categorically stated here that the Inspector of the Plant-site Police Station (C.W. 9) examined them touching the bus incident and took recorded statements from them. This very inspector investigated Shri Chauhan's case (Plant Site Case No. 125/68) and recorded their statements in the case-diary which are completely bare of any reference to the bus-incident. The investigation, as contended, ostensibly and deliberately swerves away from the bus-incident. Two inferences reasonably flow from this: (i) The informant who is the Additional S.P., Rourkela and the I.O. who was directly subordinate to the former at the time of investigation, were acting conjointly in the matter of investigation, and (ii) any probe into the bus-incident might have disclosed any act of criminality by one or both of the police officers.

(v) Shri Chauhan plays the Role of a Protector of Shri Mallik :

82. Right from the time when he intervened in the bus to pacify the lady, Chauhan is acting and speaking with mental reservations. His assurance to the lady that the misunderstanding will be cleared when they reached Cuttack is meaningless. First of all, he himself does not know what is the misunderstanding, and secondly, he has not elaborated any where in his evidence, either in his affidavit or in his deposition, as to how he proposed to clear the misunderstanding. It is obvious that his empty assurances made, were just to tide over the crisis of the moment, and to save Shri Mallik from further humiliation of being compelled to disclose his name, and rank, in the presence of all. It may also be that he gave the impression to the passengers in the bus that he is a friend of the husband of the lady so that there may not be any clash or agitation at the moment

at the place where the incident took place. He tries to bury the bus episode. He suppressed Mallik's name from Manoranjan Patnaik when the latter met him on 30-12-67. This injured Manoranjan's feeling and he complains about it to the S.P., Rourkela (C.W. 5.), who verified it from Chauhan himself. Chauhan told the S.P. that Mallik's name was supplied to Manoranjan a few days subsequently, but not on 30-12-67. He does not disclose the entire bus-incident to S.P., Rourkela, immediately. He tells him about it in the third week of January and that again, a truncated story by concealing the assault part of the incident. The S.P. gets the impression that he is suppressing. Thus, the subsequent conduct of Shri Chauhan in not disclosing the name of Mallik to Manoranjan and suppressing the material part of the incident which took place in the bus from the S.P., Rourkela, clearly show that he wanted to shield Mallik. He had two informations of a very serious nature. One is the allegation of outraging the modesty of the lady and the other is assault with Chappal on an I.P.S. Officer. Thus, he failed to discharge his legal duty in omitting to report these matters to proper authorities either at Cuttack or at Rourkela. This is obviously motivated by a desire to screen Shri Mallik.

83. His evidence is a mass of prevarication, inconsistencies and contradictions. He says that he did not consider the bus-incident involving alleged outraging of the modesty of a lady important. He admits that there was at least open allegation of commission of a cognizable offence to him. He admits that the lady was saying something besides demanding to know the name of Mallik, but says he could not understand. The conductor and the cleaner understood it and have reproduced it in evidence. I found Chauhan to be well-versed in Oriya and can read the printed script easily and I find it hard to believe him that he did not understand what the lady was saying. He apparently evaded having had to say something which would not only corroborate C.Ws. 4 and 7, but would be deadly to Shri Mallik's interest.

84. He states categorically in reply to my question : "Till today I do not know what is the real incident that happened in the bus." Then he says: "I swallowed the story of Mr. Mallik regarding the major part of the occurrence which I had not seen with my eyes."

Later on, he says that he believed Mallik's story because he "thought that there was some sort of a misunderstanding between the lady and Mr. Mallik and also thought that the only misunderstanding that could take place under such circumstances

was which is normal in crowded places, buses and trains, that means "touching of somebody's person by another person". He has stated in his affidavit that Mrs. Patnaik had asked him to report the incident to Manoranjan. He had agreed to do so. The lady had indicated by her reaction that she had been misbehaved with by Mallik. She had also expressly and openly said so in the bus. She naturally expected Chauhan to have heard it. So when she told him to inform her husband she obviously expected that he would tell Manoranjan that Mallik had outraged her modesty or at least misbehaved with her. Yet, in spite of all that when he goes back to Rourkela, on his own version, he calls Manoranjan and tells him only Mallik's version and not the other part, though Manoranjan says that he reported to him about the misbehaviour to his wife. If Chauhan's version is accepted, he plays false to the lady and to his own conscience.

85. He does not mind to go back upon a sworn statement if that would help Mallik. Admittedly he, Shri Mallik and one Shri K. K. Ghosh of Calcutta had gone to Bolangir on 28-4-68 and stayed in the circuit house till 30-4-68. On 4-9-68 he deposed as follows:

"I did not know what business Mr. K. K. Ghosh had at Bolangir. I also do not know what business Mr. S. P. Mallik had at Bolangir. I did not ask either Mr. Mallik or Mr. K. K. Ghosh as to why they were going to Bolangir and what was their business there. I cannot say if they did any business at Bolangir." On 5-9-68 he gives a directly contradictory version such as:—

"Mr. Ghosh and Mr. Mallik both decided to come with me to Bolangir to consult Mr. Swain, as I was going there for the same purpose. I knew from Rourkela that the specific object of Mr. Ghosh and Mr. Mallik was to consult Swain."

When asked to reconcile the two statements, he concedes that he cannot. The learned counsel appearing against Chauhan offered an explanation for this palpable contradiction. They referred to the evidence and pointed out that there was at one time a publication of a news that Shri Chauhan and Shri Mallik had gone to Bolangir to pay a sum of Rs. Ten thousand to the Swatantra party fund with the object of influencing the Government to take a lenient view of the delinquent officers involved in the bus-affair. This news was, however, promptly retracted as probably it was untrue. He probably thought that

though the newspaper report had been retracted, yet if his first statement stood, it may induce a thought in the Commission on the same lines as the news report. Whatever that may be, this manner of retracting statement makes it very risky and utterly unsafe to rely upon his evidence without independent corroboration.

(vi) Inaction of Shri Mallik :

86. It is argued that Shri Mallik's version of the bus-incident is refuted by his own inaction. If his story that he was unjustifiably beaten with Chappal by the lady in front of so many bus passengers including a colleague and a subordinate of his, it is inconceivable that he should silently suffer such insult and humiliation without retaliation. Such personal insult has also its impact on the prestige of the Police force in general and Shri Mallik must be credited with sufficient intelligence to be aware of this. His reaction then, and later on, to this assault on him should have been vastly different, if his story were true. On the contrary, if he were really guilty of the misconduct, as is alleged against him, he would try to hush up the matter without creating turmoil over it. It is urged that if Shri Mallik was really the aggrieved party he could have proceeded against the lady legally. He could and should have told the I.G. of Police all about it and be guided by his advice in the matter. He has done nothing of the sort and this lukewarmness on his part is evidence of guilt. There is considerable force in this argument.

87. To nullify such an inference of guilt Shri Mallik tells me here that he refrained from taking any action as the lady's husband apologized and begged excuse on behalf of his wife. But in view of the evidence of S. P., Rourkela (C. W. 5) that Shri Chauhan withheld Mallik's name from Manoranjan and suppressed the material part of the bus-incident, namely, assault, from him (i. e., S.P., Rourkela) Manoranjan's statement that Shri Chauhan was trying to settle up the matter with him becomes credible. So the present version of Shri Mallik has been made up to explain away his inaction and Shri Chauhan has trailed along in his support.

88. There is another omission on the part of Shri Mallik which is a significant one. On coming back from leave he learns for the first time as he says, about the allegations made against him in the press. He thereupon proceeds forthwith to clarify his position in the eyes of his colleagues. He writes a letter on 27-3-68 to the Secretary, I. P. S. Officers Association, intended to be circulated amongst its members, making pointed reference to the defamatory publications in Niakhunta which include the

article 'SATYA O SANGHATIKA' in which the act of outraging the modesty of the lady has also been imputed to him. In it, he denies the authorship of the impugned letter but not the criminal act of outraging the modesty of the lady. It is, therefore, argued that in view of the impending inquiry by the Commission which, the Government had decided then to hold, he did not dare to say anything regarding outraging of modesty as the story had not then been tailored for him and he was at a loss what to say which might stand him in good stead in the inquiry.

(vii) Search for Defence :

89. Mallik says that his brother sent one Mr. K. K. Ghosh from Calcutta to render legal advice to him. He came to Mallik at Sundargarh and after ascertaining facts from him tried to lay down a possible line of defence which, as he says, in one part of his evidence, was adopted in his affidavit. Subsequently, he engaged Mr. S. Mohanty, Advocate, to whom he disclosed the line of defence suggested by Mr. Ghosh but the said line of defence was not approved by Mr. Mohanty. He then says that the defence suggested by Shri K. K. Ghosh was completely different. This is what Shri Mallik says :

"By the time I signed the Vaklatnama, I had full consultation with Shri S. Mohanty. I had told him the line suggested by Shri K. K. Ghosh. The line of defence was not approved by Shri S. Mohanty. The defence suggested by Shri K. K. Ghosh was completely different."

There is nothing illegal in searching for the correct line of legal defence, but there is no question of any search for factual line of defence. If the truth was an accidental tumbling down on the lady in the circumstances related by Shri Mallik, there can be no scope for any alternative line of defence based on that fact so as to give rise to any difference of opinion as to which one to adopt.

(viii) Mallik gives doubtful evidence in regard to trip to Bolangir :

90. This trip was undertaken by Chauhan, K. K. Ghosh and Mallik. They stayed at Bolangir circuit house. The relevant entries in the visitor's book (Ext. 53) shows that Chauhan and K. K. Ghosh reached Bolangir on 28-4-68 at 00.30 hours, while Mallik reached on that very day at 12 noon. They all left Bolangir on 30-4-68, Chauhan at 18 hours, and K. K. Ghosh and Mallik at 17 hours. This indicates that Chauhan and Ghosh went together to Bolangir, but Ghosh and

Mallik left Bolangir together at the same time. Mallik had an official tour programme to Rourkela on 27-4-68, as S. P., Sundargarh. He, his wife and Ghosh left for Rourkela that day. On the way it was settled that Ghosh shall go to Bolangir to have a consultation with H. B. Swain, Advocate, on the question whether a writ application should be filed to quash the notification setting up the Commission of Inquiry. Ghosh was new to Rourkela and yet Mallik dropped him at the O. M. P. inspection bungalow and left him alone to find his own way to Bolangir. On being questioned, if O. M. P. inspection bungalow was available to rent to outsiders, he said that K. K. Ghosh remained with the Commandant, O. M. P., 4th Battalion, N. K. Singh. On his way back from tour that day (27-4-68) he enquired at Singh's house and learnt that Ghosh had already left for Bolangir. He further says that Ghosh reached Bolangir in the night of the 27th. Chauhan completely discredits this testimony when he says :

"I gave him (Ghosh) a lift to Bolangir. Mr. Mallik came with Mr. K. K. Ghosh to my office, that is, police office, and then he introduced Mr. Ghosh to me and I told that that very day I was leaving for Bolangir. They said that they also would like to accompany me. I was going in a car and they were going in a jeep."

91. Mallik called on Shri R. K. Padhi on the forenoon of 25-3-68. That was the day when he returned from leave. He was questioned by Shri Padhi if he had written a letter casting aspersions on the morals of Oriya girls which had been published in Niakhunta. He denied. In spite of his denial, he was directed to go to Shri Jaseph and see the latter himself and then give his final reply. He goes to Joseph, sees the letter and finds it difficult to read, and yet without making any effort to read it, either by himself or with assistance which was not lacking in the office, he goes back to I.G. and repeats his denial of authorship. He admits freely that he felt no anxiety or curiosity to get that letter in Niakhunta read out or deciphered. Even when his attention was pointedly drawn to the publication of the letter in Niakhunta by Shri J. K. Ray, S.P., Dhenkanal, he evinced no interest. He knows that he was involved in the bus incident. It must have been apparent to him that after a quiet of about two months, somebody is not only raking up old matters, but fabricating written evidence against him and in that background it is inconceivable that he should show detached disinterest about it when the derogatory publications came to his notice verbally for the first time on 25-3-68. Judged in standards

of normal men, Mallik's unconcern can be explained only on one hypothesis that he had knowledge of the impugned letter before 25-3-68.

(ix) Another Circumstance—A Test of Truth:

92. One test of truth of the accusation against Shri Mallik can also be made on the basis of the subsequent conduct of his. For that the entire story of Shri Mallik may be assumed to be true which would mean that it has to be assumed that Shri Mallik for no fault of his, was assaulted with Chappal and filthily abused and his character was assassinated by false imputations by a lady who was quite a stranger to him. This humiliation was caused to him in front of the public, a brother officer, and a subordinate officer of his. In this background, his natural course of conduct would be to take stern action against the lady at the next available opportunity. He is expected to meet the I.G. of Police and apprise him of the incident and then take action. In addition to his personal humiliation, it involved the prestige of the entire police force. This prestige cannot be sacrificed by the lady getting away scot-free after her highhanded action. There can be no question of amicable settlement in these circumstances, if true. The implication of inaction must have been crystal clear to Shri Mallik and he must be assumed to be aware that any indignity to the police force is not negotiable by any individual police officer. The I.G. of Police must know about it. But Shri Mallik's subsequent conduct, on the otherhand, has been poles asunder from the normal expected one. The I.G. of Police was kept in the dark and Shri Mallik through his emissary Shri Chauhan, tries to make up matters with the lady's husband on his own responsibility. The actual conduct of Shri Mallik is indicative of a guilty conscience and a desire to hush up, and is corroborative of the lady's charge.

S. K. Ghosh, I.G., Vigilance (C.W. 32):

93. He held a secret inquiry into the allegations against the two officers and submitted a confidential report (Ext.50). He recorded a finding against Shri Mallik alone that he was guilty of outraging the modesty of the lady house-surgeon and recommended that he be sent away from Orissa on deputation. He says that in course of his inquiry he questioned Shri Chauhan about the incident and got the following reply:

"ESA TO HOGAYA : SIR KAISE BACHA DIJIYE"

He further says that he also questioned Shri Mallik himself sometime in the last week of March about the bus-incident, but he kept mum. He appears to believe that the admission of

Shri Chauhan and conduct of reticence of Shri Mallik offered full corroboration to his finding. He has not personally examined any witness during his inquiry, but relied upon reports submitted to him by his subordinates.

94. I am not concerned with his findings. I must come to my finding on independent primary evidence. So, his report and his finding based on hearsay, cannot be treated as admissible evidence in proof of outraging of the modesty of the lady by Shri Mallik and must be discarded altogether from consideration for that purpose. The statement of Shri Chauhan to him, as quoted above from his evidence, apart from being denied by the former, is equally vague. He has not clarified what the expression 'ESA' means and what Shri Chauhan meant by it. Without anything more, the word "ESA" cannot be held to refer to the criminal act committed by Shri Mallik. So I have no doubt that the evidence of this witness and his report (Ext. 50) are quite valueless for the present issue under examination. His report and his evidence in so far as they are relevant for the second term of reference, namely, circumstances leading to the agitation, will be considered in due course.

Dr. Sarat Chandra Misra (M.W. 33) :

95. He enquired from Minati about the bus-incident being asked by the I.G., Vigilance, to do so. He made the inquiry in the first week of March, 1968, long after the I.G., Vigilance, had submitted his report. The statement of Smt. Minati Patnaik was not made to him immediately after the bus-incident but long three months after. The exact statement made by Smt. Patnaik appears to have become blurred in his memory. This is clear when he says that he does not exactly recollect: "if Mrs. Minati said that one of the police officers put his hands on her back or buttock". But the essence of his evidence is that Minati told him that one of the police officers had outraged her modesty in the bus and had begged excuse. Thus, his evidence is generally corroborative of the allegation against Shri Mallik.

(x) Begging Excuse :

96. It has been stated by some witness that Shri Mallik had begged excuse either during assault or just prior to assault. A lot of stress has been laid on this part of the evidence by Shri S. Mohanty, Advocate for Shri Mallik, as corroborative of the defence story of accidental fall. This is not conclusive. If he did it intentionally, he would certainly beg excuse when caught in the act. So this aspect of evidence has, by itself, no determinative value. On the contrary, in the context of other evidence, it lends support to Smt. Patnaik's charge against Shri Mallik.

Umakanta Biswal (C.W. 81):

97. This witness pleaded complete ignorance of the bus-incident though he was travelling in the bus. His evidence has no value at all in the context of other evidence adduced.

(xi) Absence of Motive :

98. This is a vital and relevant aspect to be considered in dealing with the evidence regarding the outraging of modesty. No motive has been imputed to the lady or her husband as to why they should falsely involve Shri Mallik. The lady and her husband are strangers to Shri Mallik and there could be no possible rivalry between them in future in their lives. The husband of the lady had cordial relationship with Chauhan and there is no reason why that feeling should be replaced by a feeling of animosity. Similarly, the lady had no axe to grind. Having regard to her domestic life, her profession and the profession of her husband, this couple could not be tool of any political party. No reliable evidence has been brought forward to even suggest that they had been utilised as tools by any interested party for any sort of gain, far less to prove it. The lady comes of a very respectable family on her father's side and is also equally connected with a respectable family on her husband's side. She has graduated from the medical college and is holding a job of house-surgeon in S. C. B. Medical College. She is cultured. She was in the family way at the time of the incident and that was her first pregnancy. Could a lady of that reputation, of that culture, imperil her own domestic felicity by making a false allegation of outraging of her modesty by a police officer of high status and that in a public vehicle ? I presume that she must also have been well-aware of the common experience of jostling in crowded buses, trains and the like and must have made allowance for that before she made the allegation so pointed by against Mallik. Further, such jostling or accidental contact with one another at that time of the night in the bus when the passengers were completely inert is a remote possibility. In fact, she says that she ascribed the first touch to an accident. It was only after the second touch of Shri Mallik that she was convinced of the deliberateness of the act and revolted in the manner aforesaid with all her passion of an insulted womanhood. In her intense anger she did not hesitate to loudly proclaim what Shri Mallick had done to her. Her words have been reproduced by the conductor and the cleaner. That being so, she cannot be accused of having jumped to any hasty conclusion that the act of Shri Mallik was motivated by unclean thoughts.

(xii) Conclusions :

- (i) The story of insect bite or getting a sensation of insect-bite which caused Shri Mallik to abruptly stand up, and in doing so lose his balance, and then accidentally tumble over the lady, Smt. Minati Patnaik, has been made up for the purpose of defence and cannot be accepted.
- (ii) The allegation of Smt. Minati Patnaik that Shri Mallik outraged her modesty is true; and that
- (iii) The statement of Smt. Minati Patnaik in her affidavit that Shri D. P. S. Chauhan had come to one of her back seats with nefarious design must be rejected as incorrect.



CHAPTER V

(i) Whether the Impugned Letter dated 30-12-67 was Addressed by Shri Mallik to Shri Chauhan Casting Aspersions on the Moral Standards of Oriya Girls and making a Reference to the Bus Incident

99. At the outset of dealing with this topic it must be recorded that Shri Mallik has disowned the authorship of the impugned letter (Ext. 50/a) and Shri Chauhan has likewise denied to have received it at his end. The original letter has not seen the light of the day. Photocopies of this letter were, however, prepared and widely distributed. I may quote here the contents available from the said photocopy (Ext. 50/a) :—

(Ext. 50/a)

Cuttack

"Dear Mr. Chauhan,

30-12-67

Season's best wishes for you. Hope you have reached safe. You have enough materials to recollect and get absorbed into them on your way back, which you must be rejoicing. As per your programme Brahmani Club night must be enjoyed today with your friends and you must be feeling more rejoicing recollecting the incident with a glass of be—

ଶ୍ରୀମତୀ ପତ୍ନୀ

Don't worry. The matter is hushed up. Please takeadvice and do not meet Patnaik which you told me to.....I am sure, the girl won't venture to inform him about the incident. You don't know the psychology of Oriya girls. You should have thrown a bundle of notes on her face when she was struggling with me. You could not follow my indication then. I am sure, she would have come down with perfect calmness.

The annoyance and anger she showed us was only a show. I know such girls especially those who read in Medical College. They could be purchased for a few coins. There are cases in which many of them pass nights in Asian Hotel with visitors. Any Telenga Rickshaw Puller is a mediator. So I once again tell you not to be worried at all. You seem to be very much nervous. I do not know why.

Please se.....e no.....it whom you.....
 me his..... ant..... o
 unnece of i..... gets a..... to no
s those gone..... the..... and he
 has been completelyed as you yourself.....me.

Please tackle the drivers, conductor and the Khalasi (Cleaner) of that day's bus; rather get them terrified on some plea or other. But never do it by yourself but always through some of your trusted subordinates. If you do not rely on any such subordinate please take the help of Santok. He is a very fine and trusted friend, as you know and could be very safely relied on. Please convey my New Year's greetings to him and his Mrs.

You must be feeling anxious to reveal the fact to your bus. Please explain to him in a rather convincing tone that the girl is newly married and she was travelling in the bus. She perhaps felt in her dream the sweet touch of her husband in bed and got herself awoke on that, so that he will have no doubt.

Let us bid good-bye to 1967, with the sweet reflection of the sweet and pleasant touch with it. Really, I forget the annoyance and anger shown by the angel the moment I remember the sweet and soft touch on her. You know I am an optimist. You won't be surprised next you come to this side to see the girl on my bed.

With cordial regards to you, Mrs. Chauhan and blessings to the.....m, I remain,

Yours sincerely

Postal Stamp

INLAND LETTER

Shri D.P.S. Chauhan, I.P.S.,
 Addl. Superintendent of Police,
 Uditnagar, Rourkela,
 P.O. Rourkela-1, Sundergarh.

The Editor of Niakhunta received a copy coupled with a petition signed by one G. S. Das and some others on 26-2-68. This petition referred to the bus-incident in detail. These documents were also received by the Chief Minister on 27-2-68.

Copies of these documents appear to have been sent to some of the Members of the Legislative Assembly, pressmen, and the President of the Students' Union, S. C. B. Medical College. The Editor, Niakhunta, made a block of this letter and printed it in the February issue of his magazine.

100. The agency of distribution remains in the shadow despite intense detective efforts to trace it out. It appears to have spared no pains nor labour to strike at its apparent victims, viz., the two I.P.S. officers whose alleged misconduct is under inquiry. It relentlessly pursued its crusade against them. It succeeded to whip up a predatory racial passion against them by ostensibly attributing authorship of this letter, containing as it does, glaring references to the bus-incident, and unsavoury aspersions on the moral standard of Oriya girls in general, to one of them, who belongs to a different race. The letter becomes the focal point of public agitation and when that has happened reason flies out of the window. Pride and prejudice supplied the deficiencies of logic.

101. The unseen hand behind this relentless campaign has successfully avoided identification and G. S. Das who is the first and foremost signatory of the petition remains elusive as ever. When I issued my notice inviting persons who may have knowledge of facts relevant to the subject-matter of inquiry to come out with their informations, I expected the original letter to be forthcoming and the agent or agents who had had a hand in photographing the original letter or drafting the petition cataloguing a series of misdeeds of a number of public officers including these two police officers to come out of hiding and assist the inquiry. But my hopes have been belied

102. The letter is a type-written one. It appears that some torn pieces of the original letter were put together and reconstituted, and thereafter photograph of the letter so reconstituted was taken. Two photographs were taken, one of each side of the inland letter. They are M. O. s. I to VI. Wide distribution of photo-copies of this letter indicates that they must have been prepared from the same negative. A pair of them, one of each side of the inland letter, constituting the complete letter was sent by the Superintendent of Police, Rourkela, to the S. P., C.I.D., Crime Branch, Cuttack, on 20-4-68 for being examined by the hand-writing expert and the photo section and for submission of opinion on two points, namely :—

- (a) What sort of type machine was used in typing the contents of the letter ; and
- (b) Whether the photo-copy is genuine or not in material aspects.

The S. P., Rourkela, also sent a copy of the petition signed by G. S. Das and others (Ext. 8/1) and a letter admittedly to have been written by Shri H. K. Ray to the officer-in-charge, Plant-site police-station (Ext. 8), to the S.P., C. I. D., for the purpose of obtaining expert opinion as to whether the photo-letter and the other two documents (Exts. 8 and 8/1) were typed on the same typewriter. Inspector Sharma (Examiner of questioned documents, C.W.3) was directed by his superior to undertake personally examination of those documents under the supervision of the D. S. P. in charge. The expert opinion was submitted on 8-6-68. It held that Exts. 8 and 8/1 (i.e., H. K. Ray's petition and G. S. Das's petition respectively) had been typed on a common typewriter and that photocopy of the letter is a forged one. It further stated that the typewriter on which the original of the photo-letter was typed was difficult to be traced in absence of specimen typed-script from the suspected typewriter. The trend of investigation by Rourkela police under the supervision of the S.P., Rourkela, at the time of requisition for expert opinion, shows that they placed greater emphasis on the theory of forgery than on Mallik being the real author of this letter. I believe that if any investigation had been made on the latter question, then, some attempts should have been made to obtain specimen writings from the typewriter in the office of the I.G., Police, where Shri Mallik was working or any other typewriter which was readily available or accessible to Mallik. Some legitimate criticism of partiality to Mallik has been levelled against the Rourkela Police on this account. This lacuna in police investigation is ascribable to either inefficient and unco-ordinated thinking or mischievous omission or fear of carrying investigation in I.G.'s office under the very nose of Mallik. It cannot pinpoint which, for lack of adequate material, nor should I have done it within the ambit of my reference. I must, however, say this much that this criticism gains support from a noting (Ext. 9/5) on the file relating to requisition, by S. P., Rourkela, to S. P., C. I. D., Crime Branch, for expert opinion on certain points relating to photocopy of the letter. This noting shows that even though this file was opened on a secret requisition of S. P., Rourkela, the D.S.P., Shri B. K. Dutta, directed Inspector Sharma, without orders from the S.P., C.I.D., to supply copies of requisition made by S.P., Rourkela, and querries made from the office of the Crimes Investigation Department (Crime Branch) in respect thereof to Shri Mallik. This arouses reasonable suspicion that Shri Mallik was apprehensive about the findings of the Crime Investigation Department and was equally anxious to get fore-knowledge of the line of investigation. The Crimes Investigation Department is staffed by persons who have acquired specialised

training in the science of examination of questioned documents and photos and C.W. 3, Inspector Sharma is one of such staff. He says :

"We do not give copies of our findings and informations to private parties except with the permission of the requisitioning authority, unless there is specific order to the contrary.....

Shri B. K. Dutta is the D. S. P., Crime Branch. But he has no connection with our Branch....." Yet he says :

"Mr. Dutta directed me to supply copies of the requisition of the S. P., Rourkela, and the inquiries made from this office to Shri Mallik, I.P.S." He, however, denies to have supplied any such copy to Shri Mallik. It is quite clear that Shri B. K. Dutta interested himself for Mallik and must naturally have done so at the latter's instance for help. One question in this connection creeps into the mind : Should Mallik require copies of the requisition, the findings and informations in connection therewith if he did not want to be forearmed ? Forearmed against what ? Obviously against a possible finding of his authorship of the letter so that appropriate protective steps may be taken to guard his future interest. What other inference is to be drawn from the conduct of Shri Mallik to attempt to fish out official secret information, if not this ? The finding of the expert (C.W. 3) that the letter appears to be a forgery or that the postal defacing stamp (Ext. 2) is faked, is a weak and vacillating one. He finds that Exts. 8 and 8/1 were typed on the same typewriter while he admits to have failed to come to a conclusion if the impugned letter and Shri H. K. Ray's letter (Ext. 8/1) are the products of same typewriter or not on the plea that there is no sufficient data. There was no extra data in the case of Ext. 8 and 8/1 than the data available in the case of the impugned letter (Ext. 50/a and Ext. 8/1) and yet he reaches a conclusion in one case while he fails in the other. In case of the defacing stamp, he is forced to admit in cross-examination that he is not definite whether the postal stamp is a forged one. He says :

"In the absence of the original I am not definite whether the seal (stamp) is forged one." There is another aspect which raises a suspicion about the honesty of his finding. An officer who succumbs to the pressure of Shri B. K. Dutta and agrees to supply copies of relevant findings and documents to Shri Mallik, particularly when the said Shri Dutta though a D. S. P. is not his superior, is equally vulnerable to pressure to return a dishonest finding to suit the interest of a party. Great reliance is normally placed on findings of experts arrived at through scientific process whose accuracy is unquestionable, but in the present circum-

stances, such dependence is out of question. Only those reasons which are the result of objective visual perception and which have been advanced by the expert in support of his findings, can be considered on their own independent merit and not because of their appeal to this expert.

Contentions regarding genuineness of the letter :

103. The substance of the contentions of the learned counsel appearing against Shri Mallik is this : The letter is so intimate and is based on so much subjective knowledge that it cannot be written by an outsider. The forger could not have any reason to tear the letter. The postal evidence indicates that the probabilities are that the letter had passed through post office and reached its destination at Rourkela. The word 'Khalasi' used for 'conductor' shows that it has been written by one non-Oriya. Shri Chauhan was coming to Cuttack for changing allotment of his car and would naturally have carried heavy cash. This information must be within the knowledge of Shri Mallik and the lines in the letter indicating "you should have thrown bundles of notes to her face" could therefore have been written only by him. All these contentions are not sound and lack objective coherence, as will be seen from my treatment of the subject hereinbelow :

104. There is no positive direct evidence of Shri Mallik having written the letter. There is no signature of Mallik on it as the portion which should normally contain it, is missing. On the reverse of that inland letter the word 'Mallick' appears at the place designated for sender's name and address. That word is also typewritten. It is not expected that such a letter should have been handed over to any third person for typing for fear of exposure unless that third person is very intimate with him. The contents of that letter were dynamite which were liable to and actually did explode public passion and the writer, whoever he may be, must have been aware of it. So, crediting Mallik, with ordinary intelligence, he, if he wrote it, must have typed it himself. In such a case should he mis-spell his own name ? From the specimen signatures produced here, he signs his name as "Mallik" but in the impugned letter the sender's name has been spelt as 'Malik' or 'Mallick', none of which is correct. This is a fact which militates against Mallik's authorship of the letter.

105. The letter purports to have been delivered on 2-1-68 from Rourkela-1 post office for which two delivery times are prescribed on all working days. One is at 8-45 a.m. and the other is 12-45 p.m. But on holidays delivery is made only once, that is, at 8-45 a.m. It is in evidence that 2-1-68 was a postal holidays when C.W. 23 (Yuvraj Tripathi), Deputy Sub-Postmaster, was in charge. According to rules, and also according to practice, there

is only one delivery at 8-45 a.m. on postal holidays. On postal holidays, before 2-1-68 when C. W. 23 was in charge, there has been one delivery at 8-45 a.m. and on all such holidays subsequent to 2-1-68 when C. W. 23 was in charge, there has also been only one morning delivery at 8-45 a.m. He also admits that ever since his posting at Rourkela-1 post office, he has invariably been placed in charge of the post office on all postal holidays. He, however, says that on 2-1-68 he ordered the afternoon delivery stamps bearing delivery time 12-45 p.m. to be impressed on all letters received by the second mail bag which are received at about 11 a.m. on the suggestion of the mail clerk (C.W. 27). This mail clerk supports C.W. 23 that on a postal holiday the latter had issued instructions for impressing incoming letters for delivery with the afternoon delivery stamp bearing 12-45 p.m. delivery time. If this evidence stood untarnished, it would be sufficient corroboration of Ext.50/a, the impugned letter, having been genuinely stamped on 2-1-68 with the second delivery stamp (12-45 p.m.) of Rourkela-1 post office. But this presumption is sufficiently rebutted by other evidence on record. C.W. 21 (D.C. Das, Superintendent of Post Offices, Cuttack) speaks of certain imperative practices prevalent in the working of post offices on normal working days as also on postal holidays in the light of which the evidence of C. W. 23 (Yuvraj Tripathi) must be discredited. In support of these practices, C. W. 21 has referred to specific postal rules. I must quote extensively from his deposition. He says:

"(A) In some post offices, there are more than one delivery and in some there is only one delivery. The delivery time in each post office is fixed by the Superintendent of Post Offices, keeping in view the time of receipt of mails. The delivery time which is recorded in the postal stamps is fixed by the Superintendent of Post Offices, and is reckoned as the time when the postmen go out with the mails for delivery. Window-deliveries are not possible before the delivery time fixed by the Superintendent of Post Offices.

If the mails do not arrive before the delivery time fixed by the Superintendent, such delivery is to be made on the next day, if there is only one delivery at a particular post office. On postal holidays, the delivery time is also fixed by the Superintendent of Post Offices. In fixing the delivery time on holidays, he can adopt any delivery time applicable to normal working days. The Superintendent in fixing the time, takes into account the normal circumstances obtaining in a particular area for a particular post office. There are rules providing for fixation of delivery time in the post offices by the Superintendent of Post Offices.

(B) In post offices where there are more than one employee the postal stamps are kept in the joint custody of the postmaster and another selected by the Superintendent of Post Offices. It is called joint overnight custody of the stamps.

In the morning, the stamps are taken out. The date-types and time-types are changed by the packer in the presence of the postmaster and then he takes an impression of the changed stamp in the book of postmarks in the presence of the postmaster and the book is placed before the postmaster. After the date-type is changed and the impression is taken in the book of postmarks different sections of the post office take the delivery postal stamps to be used for the day. At the time of taking the stamps the clerks concerned are to see the impression in the book of postmark and satisfy themselves that the dates, etc., have been correctly changed and initial the book of postmark in token of having done so. After the day's work is over, the assistants of the different sections return the stamps to the postmaster for being kept in joint custody.

In my experience, I have never come across any postal delivery stamp being used without its impression being taken on the book of postmarks. Where on postal holidays, there is only one delivery, viz., at 8-45 a.m., the book of postmarks would show that there is only one impression of 8-45 delivery stamp.

(C) If the second of January 1968, was a postal holiday for Rourkela-1 post office, then the absence of the impression of the postal delivery stamp on MO. V. the book of postmarks, would indicate that this stamp impression on MO. V had been given either by a faked stamp or by procuring a genuine stamp by illegal means since there was no delivery time fixed at 12-45 on a postal holiday as is indicated on MO. V. I will rule out negligence on the part of the postal employees because there was no delivery time at 12-45 and the impression is also absent in the book of postmarks on 2-1-68.

(D) The impressions of the postal stamps are taken in the book of postmarks in the presence of the postmaster, nor necessarily under his direct notice, as the postmaster always keeps an eye over it. The purpose of maintaining the impressions in the book of postmarks is to ensure that the date and hour types in the stamps have been correctly changed before they are actually brought to use."

106. On 2-1-68 inexplicably all the related by C. W. 21 have been violated. This is the solitary instance when C. W. 23

admits to have done so. On the top of it, the mail clerk who according to Yuvraj Tripathy (C. W. 23) changed the delivery time-types of the second delivery, flatly denies to have done so.

C.W. 23 says:

"I directed use of the postal stamp bearing the second delivery time 12-45 p.m. because I thought that it would be better to keep the letters received in the second mail bags stamped for delivery on next day in order to indicate that they were received on that day.....This practice was not prevalent before 2-1-68 in that Rourkela-1 post office.....The practice of stamping letters received after the post peons have left for delivery of letters on postal holidays, with second delivery stamp of Rourkela-1 post office which I introduced on the suggestion of the mail clerk, has not, to my knowledge, been followed subsequently....."

He has also deposed :

"During my discussion with the postmaster after he came back from the Plantsite police-station where he had been summoned in connection with Mr. Chauhan's case, I had seen that the book of postmarks did not carry the impression of second delivery stamp of Rourkela-1 post office dated 2-1-68. When it was found from the publication in Niakhunta that a letter bearing 12-45 hours delivery time had been stamped on 2-1-68 at the Rourkela-1 post office, there was a discussion in the post office as to how that could be and I was present near about that discussion. I could not advance any explanation for that unusual phenomenon as I did not know that I was on duty on that day."

He further said:

"Before I came to depose, I have never informed the postmaster that it was on my instructions that the second delivery stamp bearing 12-45 hours had been used on 2-1-68 which was a postal holiday." At another stage he stated as follows:—

"Prior to 2-1-68, I have also been in charge of postmaster of Rourkela-1 on postal holidays. I was in charge of Rourkela-1 post office as sub-postmaster on postal holidays within two months next preceding 2-1-68."

107. This establishes that C. W. 23. Yuvraj Tripathi, postmaster-in-charge of Rourkela-1 post office decided on 2-1-68 to break with the past practice which was in consonance with the postal rules which he himself was following and which he resumed after that single day of break. Neither he, nor the

mail clerk did disclose any situational novelty as existing on 2-1-68 which had an element of compulsion to adopt a different practice for a day. C.W. 23's admission that though he was present at a discussion between the postmaster and other employees of the post office trying to discover the reason for user of the second delivery stamp on 2-1-68, and was aware of the subject-matter of discussion, he kept his own counsel instead of volunteering information which would have been very normal and natural conduct of an honest man. He gives a reason for his quiescence. He says that as he did not then know that he was in charge as the postmaster on 2-1-68, he failed to supply the solution for the problem which was agitating the discussion. This is a very doubtful explanation. He has stated on oath that since a couple of months prior to 2-1-68 and subsequent thereto he has been acting as the postmaster in charge on all postal holidays without break. If so, the explanation for his conduct of silence stands refuted. The absence of impression of the second delivery stamp in the book of postmarks (Ext. 20) militates against the evidence of C. W. 23. The mail clerk (C. W. 27) comes forward to support him, but does not take the risk of stating that the letters had been actually impressed with the second delivery time.

108. Internal evidence afforded by the impugned letter, in the background of the cases of respective parties as unfolded in this inquiry, tends very clearly and very strongly to demolish the theory of Mallik's authorship of it. There is nothing in that letter which could be attributed to exclusive and special knowledge of Mallik and Chauhan or of Mallik alone as on 30-12-67 to lead to the irresistible inference that Mallik and no other could be its author. There are statements in it which are either inappropriate or false. For instance, it refers to : "Don't worry—the matter is hushed up". The encouragement or solace implied in the expression "Don't worry" is not likely to come from Shri Mallik to Shri Chauhan. It should have been the other way round. Then again, nobody attempted on 30th December, 1967, or before, to hush up the matter at Cuttack. C. W. 1 the lady herself, says that there was no approachment between her and the offending officer. It is fantastic to think that any wife could settle a matter of this character without reference to her husband involving a risk to her domestic felicity and conjugal trust. The husband, Manoranjan, was not aware of the bus incident till late hours in the morning of the 30th December 1967. The wife wrote about it to her husband on 28-12-67 (Ext. A), and the husband received it after he had his meeting with Chauhan on the 30th

morning. It is also in evidence that Shri Mallik talked with Chauhan over phone after the latter's interview with Manoranjan on the morning of the 30th. Two natural and probable inferences arise out of these facts. One is that if Chauhan's version is correct that Manoranjan apologized for his wife's conduct and requested the matter to be dropped and he communicated these sentiments to Mallik, there could be no need for Mallik to write the impugned letter subsequently saying that 'the matter is hushed up' and that Chauhan should tackle the drivers, conductor and the cleaner of the deluxe bus. The second is that if the impugned letter had been written and posted before Mallik's trunk-call to Chauhan matured, the wife was obviously not apprised of the husband's offer of apology and his desire to close the matter and could not take any step to hush up the matter.

109. In any event the probability of the matter being hushed up was remote and in fact from all indications provided by the evidence on record I am inclined to hold that the matter had never been hushed up on or before 30th December 1967. Accordingly, the reference to the hushing up of the matter in the impugned letter relates to a patent falsehood and this reference could not have found place there if it were a genuine one. It is more likely that a person who fabricates composition of that letter at a much later date imagining things as to the state of knowledge of the person to whom the authorship is to be ascribed and the person to whom this letter is to be addressed, is likely to commit such mistakes. There is another statement in the letter which runs as follows:

"You should have thrown a bundle of notes on her face when she was struggling with me. You could not follow my indications then.....

I am sure she would have come down with perfect calmness."

The facts suggested by this part of the letter are on all hands untrue. Neither the lady, nor the police officers, nor any other witnesses, who were passengers in the bus at the time of the incident, say anything which, by any far-fetched interpretation, even suggests the truth of this fact. That statement in the letter indicates that there was some struggling between Mallik and the lady which went on for quite a while—long enough for Mallik to give indication and Chauhan to take out notes from his pocket and throw them at her. It is also fantastic to think that Mallik at that point of time would give

indication to Shri Chauhan to throw notes in public bus occupied by a large number of persons so that the same is most likely to attract the notice of others. This inherent improbability of the situation as pictured in the sentence quoted, from the impugned letter is enough to influence a finding that the writer could not have been Mallik.

110. C. W. 5, Shri S. C. Misra, is the Superintendent of Police, Bhubaneswar. He states that Shri Chauhan met him sometime in the third week of January 1968, and voluntarily informed him about the bus incident and from the reproduction of Chauhan's narration of the bus incident to him, it appears that the theory of the whole matter having been hushed up by the 30th December 1967, can be nothing but a figment of imagination. He also further has deposed that Manoranjan Patnaik, the husband of the lady, had made a complaint before him that Chauhan deliberately refrained from disclosing the name of the person who misbehaved with his wife on 30-12-67, when he interviewed Chauhan. This complaint would not be forthcoming if the matter had been hushed up.

111. C.W. 5 further states that he has seen some of the semi-official letters addressed by Shri Mallik to Chauhan in which the form of address is "My dear Chauhan". It is, therefore, more natural and appropriate that Shri Mallik should address in the same informal manner and not in a formal manner as "Dear Mr. Chauhan". The impugned letter is obviously an incongruous one, and is a clear pointer of concoction rather than genuineness.

112. I have considered the contentions of the counsel for the lady and her husband, and the Editor, Niakhunta, on the genuineness of the letter based on intrinsic evidence, but I find them lacking in objective coherence and based too much on fanciful surmises.

(ii) Conclusions :

113. (a) There is no basis to hold that Shri S. P. Mallik wrote the letter, the photostat copy of which is Ext.50/a, on 30-12-67, to Shri D.P.S. Chauhan, making a reference to the bus incident and casting serious aspersions on the moral standards of Oriya girls in general and girl medical students in particular.

(b) There is no evidence that Shri D. P. S. Chauhan did at all receive the original of Ext.50/a.

(c) It is not possible to determine the post office where the original of Ext.50/a was posted, since the defacing ~~post~~ stamp was a complete smudge.

(d) Apparently the original of Ext. 50/a which has never been produced, bears the impression of the delivery stamp of Rourkela-post office, but that impression has not been given on 2-1-68 genuinely, but has been given by procuring the stamp by illegal means. C. W. 23 (Yuvraj Tripathi) did not speak the truth.



CHAPTER VI

(I) Circumstances Leading to the Agitation :

114. The notification refers expressly to two agitations : (i) agitation in the Orissa Legislative Assembly, and (ii) the agitation by the students. There is a third agitation which is implied; that is, the agitation in the newspapers relevant copies of which were also placed before me as per the notification.

115. The Assembly agitation comprises two phases. The first phase actually commenced on 7th March 1968 by means of a call-attention notice by Shri P. K. Das, though the notification refers only to the call-attention motion of the 13th March, 1968. The second phase opens on 22nd March 1968, by tabling of adjournment motions one by Shri Nishamani Khuntia and the other by Shri Jena and others.

116. The agitation by the students took visible form in the eyes of the Government by issuance of a notice to the State Government dated 21st March 1968 and it continued unabated till 28th March 1968, when the students' strike was called off. The publication of the news of two of the top-ranking guardians of law and order breaking the law and getting disorderly themselves in outraging the modesty of a young lady inside a Government bus in the midst of a number of passengers stirred the public mind. Though agitation over it had started in newspapers as well as in the Legislative Assembly, the organised attention of the students community was focussed on it on 19th March 1968, when in an executive meeting of the S. C. B. Medical College Students' Union, one Anjalika Mahanty, Secretary of the Ladies' Hostel Union, S. C. B. Medical College drew attention of the Committee to the letter dated 30th December 1967 published in Niakhunta. The Executive Committee, thereupon, authorised the President and Secretary of the S. C. B. Medical College Union to take necessary action in the matter. Thus, the agitation by the Students, community took shape and rapidly gathered momentum.

117. Agitation in the newspapers was a prelude to the agitation in the Assembly. The Kalinga is the first newspaper in the field to publish a report of the bus-incident. It published informations as now found in the Government file regarding the recommendation of I.G., Vigilance, respecting the two I. P. S. Officers involved in the bus incident and difference of opinion over it between the Chief Secretary and the I.G., Vigilance. It also

referred obviously to the impugned letter stated to have been written by Shri Mallik to Shri Chauhan and stated as if the original letter had been seized and photographed at Rourkela and that a photo copy of the same has been sent to the Chief Minister. This news item is dated the 6th March 1968 but was published in the issue of the 7th March. This publication of Kalinga was annexed to the call-attention notice of Shri P. K. Das, M. L. A. It also makes a passing reference to an agitation in the Secretariat over the bus-incident. Cryptic news regarding the bus-incident also appeared in the Prajatantra of 8th March 1968, followed by a comment "SATYA HOITHILE SANGHATIKA" published in its next day's issue, i.e., 9th March 1968. There was a demand in this comment for a full disclosure of the true facts of the bus incident by the Government. It was alleged that the top authorities of the Government were making vigorous attempts to shield the two officers for the past two months. Though an inquiry was indicated in this comment, it apparently left the Government free to choose their own mode and fix the nature of inquiry as they thought fit. This agitation was given greater and greater impetus by other newspapers and magazines. Its tone became more strident and inciting. The situation was gradually becoming inflammable but the heat of the agitation in the Assembly seemed to subside after the Chief Minister's statement in the Assembly on the 13th March 1968. Just on that day, the Editor of Niakhunta, published the letter with an article "SATYA O SANGHATIKA". He applied the matchstick to bring forth the flame.

118. On 8th March 1968, two more M. L. As, Shri Chintamani Jena and Shri Binayak Acharya issued a fresh call attention notice. This also refers to the bus-incident, report of I.G., Vigilance and photocopy of the letter. There was a general discussion in the Assembly on the subject-matter of these call-attention notices on 13th March 1968, in which the Chief Minister made a statement. The Chief Minister disclosed that the Government had decided to get the allegations inquired into by the I.G. of Police (General) and to take such action as may be called for in the light of the report which the I.G., may ultimately submit. In course of this discussion opinion was expressed preferring a judicial inquiry. It appears that the agitation in the Assembly subsided thereafter.

119. This declaration of the Chief Minister was merely reiteration of his decision which he had taken on 7th March 1968, on the report of the I.G., Vigilance, after considering the differences of opinion existing in the matter. He had made a distinction between allegations of the charges of corruption and misbehaviour, and decided that the matter being one of nature of misbehaviour should be regularly enquired into by the I.G. of

Police (General). Thereby he disagreed with the recommendation of the Deputy Chief Minister which was in accord with that of I.G., Vigilance and took the matter out of the hand of the latter and entrusted it to I.G. of Police (General).

120. Normally every cause has an effect, but it often happens that one effect also becomes the cause of another effect. Thus, at times a vicious circle starts and it is difficult to pinpoint which is the cause and which is the effect of that cause. Experience also has it that existence of a cause does not always produce an automatic effect because of its weakness or because the strength in it is in a dormant state. When another cause appears on the field and coalesces with the first one, either it activates the dormant strength of the first cause or adds its own strength to it and then the cause or causes get momentum and effect is produced. Something like this confused growth of cause and effect occurred in this case. Causes and effects, more than one, intertwined to produce the carpet of agitations.

121. A review of essential facts antecedent to the period of agitation commencing on 7th March 1968, is called for. The bus-incident occurred on the night of 27th/28th December 1967. It caused a localised agitation amongst the passengers which was transient. This incident had a peculiar aspect. It showed up one I. P. S. officer as a small man, a common criminal. It evoked thought as to what low level such a man may not descend. It was also a strange sight to those who were aware of Shri Mallik's rank and status to see him assaulted by Chappal. Such a tale would be a juicy one to tell and naturally it spread through bus passengers as well as by the lady and her husband. But there was no immediate agitation over this incident.

122. A report of this incident seems to have been lodged by the conductor with the station-master of Rourkela bus station, but nothing came of it. There was an attempt by Shri Chauhan to settle matters with the lady's husband and hush up the episode, and naturally he did not tell the S.P., Rourkela, for in that case the matter would go out of his hand, if the S. P. decided to take action by reporting to Government. Manoranjan's letter to his wife seems to indicate that Chappal beating was sufficient chastisement and these Chappals were to be kept as memento of his wife's heroism. There was thus no inclination on their part to go to court or to inform the Government for taking suitable departmental action.

123. Shri Harihar Patel, Minister of Industries was aware of this bus-incident and in fact mentioned about it to Shri P. M. Mohapatra, the A. D. M., Rourkela, sometime during the third

week of January 1968. It was casually mentioned by the Minister and indifferently heard by the A.D.M. The implications of the incident from the official standpoint never struck either of them. Thus, the news of the incident infiltrates to high official quarters but the officer and the Minister are placid about it, as if it is none of their business to probe deeper into the matter in the interest of parity of administration.

124. At about this time, that is, in 3rd week of January, Shri Chauhan disclosed a part of the bus-incident to S. P., Rourkela (C. W. 6). He said that he was a witness to it but suppressed that Shri Malik had been assaulted. The S. P., though he was convinced of this fact, did nothing in the matter. He got further details of the bus-incident from one J. Babu, Officer-in-charge of township police-station sometime in February 1968. He was also aware that rumour regarding the bus-incident emanated from the transport staff and was afloat in Rourkela. He met both Shri Chauhan and the I.G., Vigilance the day after Shri Babu narrated the bus-incident. The S. P. showed a curious apathy towards knowing more about the misunderstanding between the lady and Shri Malik after being convinced that Shri Chauhan was suppressing facts from him. He did not question Shri Chauhan this time about the misunderstanding, nor did he confront him with the story he had heard from Shri J. Babu. Then again, when he met I.G., Vigilance, the latter informed him that he was inquiring into the conduct of Shri Malik regarding his misbehaviour with a lady passenger. By raising this topic, he obviously invited this S. P. to divulge any information he might have had on the point. He remained completely reticent. He knew that the kind of rumour which was being circulated in Rourkela would be harmful to the reputation and morale of the police force. He must be credited with intelligence of realising that such rumour must be killed as soon as possible by discovering the truth and yet he with-holds his assistance from I.G., Vigilance. He had a duty to disclose and he failed in that. True it is that this default of his did not ultimately affect the inquiry. He did not inform the Government that the morale of the police force was in danger due to dissemination of rumours regarding bus incident. He admits it. He again failed in his duty. He explains his conduct by saying that he knew that Government were apprised of the situation from I.G., Vigilance. It is in evidence that Government did not know of it until I.G., Vigilance, submitted his report and I.G., Vigilance, could not have told him that. He met I.G., Vigilance, sometime in the third week of February. So he could not be aware that prior to it that Government had the necessary information but he had rumour of the bus-incident coming to him since third week of January. There is no explanation as to why

he slept over the matter. Probably he did not attribute any importance to the information he received first from Shri Chauhan and did not visualise the dangerous possibilities if the current rumours were not tackled. May be, he thought that these rumours would have a natural death. Government expect their officers, wherever they are and at all levels in the official hierarchy, to do their duty, even though they may feel that any particular performance may be redundant, and also to remember that "A stitch in time saves nine". I have no materials to say that this laxity on the part of S. P., Rourkela was a direct cause of any agitation. If he had been inquisitive, far-sighted and alert some, or all of the agitation might never have taken place. It is a very probable thought.

125. I.-G., Vigilance, made a secret inquiry during the third week of February into the bus incident which involved the conduct of two I. P. S. officers. Much of the evidence on which he relied for his conclusions may not be strictly admissible in a court of law, probably none. But that inquiry was merely a stepping stone to an open inquiry which he recommended. A lot of criticism has been made against him as to his jurisdiction to inquire, his personal rectitude, his bona fides, and official decorum, much of which may be true, but his finding of misconduct of Shri Mallik now appears to be correct as I have also held elsewhere in this report on independent consideration of evidence collected in this inquiry. Shri S. K. Ghosh as I.-G., Vigilance, and also as the *ex officio* Additional Secretary to the Government moved in this matter and the Deputy Chief Minister wanted the open inquiry to be made by him (I.-G., Vigilance). He (S. K. Ghosh) submitted his first report on 22nd February 1968, and advised transfer of those officers outside Orissa straightaway. This was resisted by the Chief Secretary who suggested an open inquiry before any action is taken. The Deputy Chief Minister supported the Chief Secretary. After submission of the first report of I.-G., Vigilance the petition of G. S. Das and others containing many allegations against a various officers besides the bus incident, and a photocopy of the letter reached the hands of the Government on 27th February 1968.

126. This petition of G. S. Das and the photographed letter had no independent effect on the mind of the Government at least there is no evidence indicating the same. It was for all practical purposes anonymous because the signatories to it have given no addresses of their own so that if inquiry was decided upon they could be noticed to appear and provide proof of the allegations. It may as well be treated as a pseudonymous petition. The signatories could not be traced out in a much later inquiry held by the

S. P., Rourkela and the two persons who were spotted out as bearing the same names as of two signatories denied all knowledge of and any association with this petition. This petition, which has a doubtful and motivated origin, and the report of the I.G., Vigilance were jointly dealt with by the Government. The bus incident referred to in the petition being the sole subject-matter of the report was treated on a separate basis from the other allegations against various other officers in the petition. The Deputy Chief Minister in his noting dated 28th February 1968 in Ext. 50 said :

"Regarding other allegations mentioned in the application it is very difficult to get evidence and proof. But still then let there be further secret probe regarding other allegations except the bus incident.

Regarding allegations against Shri Mohapatra mentioned in the application nothing definite has been mentioned. How and in what way one enquiring officer will enquire about the A. D. M.'s omissions or commissions in these narration? Hence I apprehend open enquiry about allegations against A. D. M. may not bring any desired effect.

Any how have open enquiry regarding the bus incident allegations."

127. The I.G., Vigilance, then gave his second report dated 1-3-68 which is a part of Ext. 50. In this he discloses that he was asked by Dr. Mahtab on 29-2-68 to meet him at Prajatantra office, which he did. Subsequently he became conscious that Dr. Mahtab's purpose in summoning him was to know the result of his secret inquiry into the bus incident. He found some students closetted with Dr. Mahtab. They were demanding an inquiry into the allegations against the two I. P. S. officers and were accusing the Police Department of having suppressed the matter. The students were told that the Vigilance Department had already undertaken inquiry and that their impartiality is not to be doubted as, in the past, many senior Government officers of different departments including senior I. A. S. officers have been suspended and suitably dealt with by the Government on their report. With such assurances, the students were sent away by Dr. Mahtab. Then the report, proceeds to describe a conversation which took place between himself and Dr. Mahtab. Dr. Mahtab told him that the students have been greatly agitated over the bus incident during the past two months and he, in return, disclosed to him (Dr. Mahtab) the fact of his completed secret probe and the result thereof.

To lend strength to his recommendation of suspension of Shri Malik he warned the Government that the opposition parties had already started agitation against enhancement of holding tax in Cuttack town, scrapping of prohibition and introduction of Kendu leave lease policy and if at this juncture, the students' agitation materialised, it will pose a serious law and order problem, a matter as rightly contended by learned Advocate-General, is one with which he as the head of the Vigilance Department is least concerned. The batch of students who are alleged to have been pressing for an inquiry into the bus incident before Dr. Mahtab on 29-2-68 and who are also alleged to have indicted the general police for suppressing the bus incident, did not respond to my notice, did not participate in this inquiry and have simply disappeared from the scene. The students' agitation referred to in the notification is a completely different one and the evidence led by the students here does not establish any link with that batch of students who is reported by Shri S. K. Ghosh to have appeared before Dr. Mahtab on 29-2-68.

128. This second report of I.G., Vigilance, gave rise to a difference of opinion in the Secretariat. The Chief Secretary expressed himself against suspension though he agreed to an open inquiry by Vigilance. The Deputy Chief Minister accepted the recommendation of I.G., Vigilance, in full. Then the matter went before the Chief Minister who passed his final order on 7th March 1968. He said :

"A distinction should be made between allegation of charges of corruption and misbehaviour. It will be better to ask the I.G. of Police to make a regular inquiry into the matter and send his report to the Government through the Secretary, Home."

129. The Chief Minister in his order rightly made the distinction between charges of corruption and charges of misbehaviour of the present nature for the purpose of delineating the areas of jurisdiction of the I.G., Vigilance and the I.G., Police (General). His order is silent as regards suspension, which means rejection of that recommendation also.

130. When the news item in Kalinga dated 8th March 1968, was composed, the Chief Minister had not rejected the recommendation of I.G., Vigilance, which had been approved by the Deputy Chief Minister. The public are informed about the bus incident in all its lurid detail, the letter supposed to have been written by Shri Malik, the recommendation of I.G., Vigilance and the opposition of the Chief Secretary to it. This difference of opinion in the confidential file of the Secretariat was obviously available to the press as would appear from

subsequent newspaper publications and this probably raised an apprehension in the public mind that the bus-incident was either going to be suppressed or the misconduct was being mitigated. It is this apprehension which made the M.L.As. and the newspapers alert. At both levels attempt was made to force the issue to a conclusion whereby the accused-officers will not get away scot-free without proper inquiry. After *Kalinga*, came the two publications in *Prajatantra* dated 8-3-68 and 9-3-68. In the latter publication a demand for inquiry was made and there was also a direct attack against the top authorities of the State being seriously engaged during the last two months in shielding the two officers. The last publication during the first phase of agitation was of February issue of *Niakhunta* on 13-3-68. It published the entire photocopy of the impugned letter verbatim and alongside it an article 'SATYA O SANGHATIKA' containing an Oriya rendering of portions of that letter and a demand for inquiry and imputing the authorship of that letter to Shri Mallik. That very day, as already stated, the Chief Minister made a statement in the Legislative Assembly declaring that inquiry by I.G. of Police (General) had been ordered and that action will be taken against them after receipt of the report. Then followed a period of quiescence.

131. The publication in February issue of *Niakhunta* published in March appears to be the immediate cause of inflaming the minds of the students. It had reproduced the letter verbatim and imputed the authorship of that letter to Shri Mallik in the article 'SATYA O SANGHATIKA'. The bus incident was verified to be true by the students from the lady house-surgeon herself and in the context of that knowledge, a perusal of the revolting and insulting contents of that letter obviously made the students intensely annoyed. They were also influenced by other newspaper-publications already referred to giving currency to an allegation that the two officers were being shielded by the general police including the I.G. of Police. The students then presented their first ultimatum (Ext. 37) on 21st March 1968. A perusal of it would show that they had incorporated in it the same demand which the I.G., Vigilance, had recommended and had expressed the same sentiment which had been clearly expressed in *Prajatantra* publication of the 9th March that the officers were being shielded and had re-echoed the charge of I.G., Vigilance, against the general police. The students accordingly condemn the proposed inquiry by the I.G. of Police. This ultimatum was the cause for some adjournment motions which were tabled on 22nd March 1968. A demand for judicial inquiry was made on the floor of the Assembly. The

Government issued a press-note on 22nd March 1968, agreeing for an open inquiry under the Commissions of Inquiry Act, but were silent about judicial inquiry. This was followed by the second ultimatum of the students demanding inquiry by a Judge of the High Court.

132. Ineptitude on the part of the Government Officers, their negligence to act promptly and firmly, lack of foresight and tact in a given circumstance, are usually the causes for creating a fertile field for agitation to grow. This, unfortunately, appears to be the case here. Government were kept too long in dark about the involvement of two I. P. S. Officers in a criminal act. Then again, when Government decided to act, opinions differed as to how the act was to be done. They agreed that an inquiry should be held but varied as to the agency. The Chief Minister was right in refusing to hand over the inquiry to I.G., Vigilance. The I.G., Vigilance, had already made a secret inquiry and had even recommended the suspension of the officers and was thus biassed. Natural justice demands that the inquiry should be by one who is free from any kind of prejudice. To that extent the Chief Minister was right and his choice of I.G. of Police (General) as the person to be entrusted with the inquiry is also administratively correct. The I.G. of Police (General) has full executive and administrative control of the entire police force. His is the responsibility to inculcate in his men and officers a tradition of courtesy and service and the feeling that they are not above the law and are answerable to it like any other ordinary citizen, if they transgress its limits. The policeman lives a more restricted and arduous life than an ordinary citizen and he is expected to behave, on duty or off, in a way which will not bring discredit to the force. It is a part of the system of police discipline and the I.G. of Police at the apex of the force is solely responsible for maintaining the good name and tradition of its men and officers and is expected to be ever watchful of the same. He, like the father of a family, is also to protect them against needless and purposeful harassment. It is thus natural that when allegations of moral turpitude are levelled against any subordinate officer of his, he must be the first person to know, and act swiftly and thoroughly as he enjoys all the powers for that purpose. If he found the officers to have committed any offence under any law for the time being in force, he was expected to hand them over to justice.

133. In his report Shri S. K. Ghosh, as already stated, had insinuated suppression of this matter by the General Police, an insinuation which obviously was also directed against the I.G., Police, the head of the police force. On the top of it, the

Deputy Chief Minister had agreed that an open inquiry should be held by Shri S. K. Ghosh. Thus, a strong impression is clearly implied by this report of the I.-G., Vigilance, that the enquiry if entrusted to I.-G. of Police (General), would not be a fair one. There is, however, no factual foundation for such belief. But the leakage of this insinuation that the general police were shielding the delinquent officers occurred and the press became aware of it. Believing this indirect suggestion of partiality made by Shri S. K. Ghosh against the General Police to be true, the aforesaid order of the Chief Minister was misconstrued as an error on strict judicial principles that a person who has shown a bias or is suspected to be prejudiced in favour of or against a cause, shall not judge it.

134. The learned Advocate-General appearing for the State vehemently contended that it is Shri S. K. Ghosh who was directly responsible for the agitation in the press and by the students, because he disclosed the fact of his enquiry, of his findings and his insinuations which were matters of secret official file to Dr. Mahtab. It was further contended that he has a deeply embedded ill-feeling against the present I.-G. of Police arising out of his failure to secure that post and he has always been on the lookout for any opportunity to discredit the general police and its head. This deep-rooted animosity sticks out from his report. The present I.-G. of Police holds his post in an officiating capacity and it will be permanently filled up on the retirement of Shri J. C. Ghosh. Shri S. K. Ghosh is subtly preparing his ground for that day, by discrediting the present I.-G. when the question of permanently filling up the post of I.-G. of Police will arise. It is to achieve this end that he had embarked upon an inquiry into the bus-incident on his own though it is beyond his power and jurisdiction and has wheedled the Deputy Chief Minister to recommend that open inquiry against the delinquent officers be entrusted to him. The learned Advocate-General further argues that the photographed letter and the petition of G. S. Das containing allegations against Shri Chauhan and Shri Mallik and other officers at Rourkela appeared circulating in the public immediately after the conclusion of Rourkela tour of Shri S. K. Ghosh and insinuates the latter's complicity in the same. It is true that he went on tour on the 16th of February and came back on or shortly before 23rd of that month. The Editor, Niakhunta, says that he received the photographed letter and the copy of G. S. Das's petition on the 26th February, 1968, and Government also received the same the next day. Thereafter, others began to receive them. It is apparent that there is some

sort of a coincidence between these two events, viz., S. K. Ghosh's term and the first appearance of the photographed letter on the 26th February 1968, but on evidence, there is nothing more to it. It is true that Shri S. K. Ghosh had admitted in his report that he disclosed the fact of his secret inquiry as well as its result to Dr. Mahtab. As rightly contended this disclosure of official secret to an outsider, who does not constitute the Government, however eminent he may be, amounts to gross impropriety and official irregularity in the discharge of his duties.

134. Of course, he attempts to lessen the gravity of his act of impropriety by saying that the Deputy Chief Minister had already disclosed to Dr. Mahtab what he subsequently told him. This statement, however, is not borne out from the Deputy Chief Minister's note dated 28-2-68. That apart, it does not give him a licence to disclose official secrets to an outsider, even if a Cabinet Minister had done so previously to his knowledge.

135. Thus, there can be no doubt that the leakage referred to above, had a considerable effect in accentuating public agitation at least during its first phase and though it cannot be said that it was the sole cause, it had contributed to the agitation.

Rourkela Agitation:

136. Though this does not strictly come under the terms of reference, the agitation there was mainly spearheaded against Shri D. P. S. Chauhan and it appears that he had created a number of enemies there in course of discharge of his official duties. Shri H. K. Ray is one who could be his enemy and probably was. He is a rich and powerful resident of Rourkela. He could, if he liked, finance and keep going an agitation against Shri Chauhan. The name of Shri Mallik was clubbed with that of Shri Chauhan as it must necessarily be, when the charge of bus-incident was levelled against the latter.

(II) Conclusions :

The cumulative effect of all the causes discussed above and briefly enumerated herein below led to the agitation referred to in the Notification. They are:—

- (a) Failure of certain Government Officers who had heard of the incident from diverse sources to inform the Government and their failure to realise the implications of the rumours which were circulating regarding it and to act to verify the truth or otherwise of the same.

- (b) Wide circulation of the petition of G. S. Das and others.
- (c) Wide circulation of the photocopy of the impugned letter.
- (d) Niakhunta publication of the impugned letter accompanied by the article 'SATYA O SANGHATIK'.
- (e) Leakage of the insinuation made by I.G. of Vigilance against the general police, and belief of the press in the same

(iii) Acknowledgement and Assistance :

138. I am much indebted to all the learned counsel who appeared before me representing different parties for their analytical argument.

I am also much indebted to Shri B. Chowdhury who was appointed as my Secretary in this enquiry whose knowledge and experience have been of immense value to me.

I must also thank Shri Brajamohan Pradhan and Shri Punnananda Rath who worked hard as stenographers and Shri G. C. Chaudhury who worked as my Peskar, and also all the members of the staff who discharged their duties ungrudgingly.

My findings are such that they may not accord wholesale satisfaction to all or any of the interested parties involved in the inquiry, but I have tried to reach them conscientiously and as objectively as I could.

S. K. RAY
COMMISSION OF INQUIRY

10th December, 1968.



सत्यमेव जयते

ANNEXURE I

4-9-1968

Orders on the question of privilege claimed by the Editor, Niakhunta, pronounced separately.

After the order on the question of privilege was dictated and while the same was undergoing final typing before pronouncement, the Editor in course of his cross-examination by Mr. S. Mohanty, Advocate for Mr. Mallik, was again asked if his secret agents disclosed to him the names of the persons whom they had interviewed or interrogated on the bus affair and replied, contrary to what he had stated earlier, that their names had not been disclosed to him. In attempting to explain the discrepancy, the Editor has said that he meant to say then what he is saying now, viz., that the names of persons interviewed by his secret agents had not been supplied to him. If this latter statement is true, then the question of privilege under Art. 20(3) of the Constitution of India should not have been argued at all and a lot of time has been wasted over this part of Mr. M. S. Mohanty's argument. I also cannot comprehend as to how Mr. M. S. Mohanty sweated so much over this point if he had not been properly instructed as to the factual aspect of the question, viz., that the Editor was told of the names but claimed constitutional immunity from disclosure, being an accused. So the question of privilege subject-matter of the order now passed, loses its present relevancy, but I still decided to pronounce it as there is likelihood of similar questions arising in future.

The Editor of Niakhunta, whose evidence is being recorded in the enquiry, stated that he got the allegations, contained in the Government Notification appointing the Commission, against two police officers, viz., Shri S. P. Mallik and Shri D. P. S. Chauhan enquired into by his secret agents and he was personally satisfied on getting the reports from them that the allegations were true. He stated that his secret agents made enquiries from other persons. The Editor accordingly was asked to disclose the names of the persons who were examined by his secret agents and whose statements conveyed to him formed the foundation of the truth or correctness of these allegations against the two police officers which formed the subject-matter of an article published in his magazine, Niakhunta. He also printed alongside the article copy of a letter alleged to have been written by one of the two police

officers to the other, which is also the subject-matter of enquiry. These publications clearly imported that these two officers had outraged the modesty of an Oriya Lady House Surgeon in a bus and that Shri S. P. Mallik had addressed a letter to Shri D. P. S. Chauhan referring to the bus incident and casting serious aspersions in general on the moral standard of Oriya girls and girl medical students in particular. The Editor has expressed his disinclination to furnish these names which must have constituted a trustworthy source for him.

2. The law governing these enquiry proceedings has been codified in the Commissions of Enquiry Act, 1952. It is, therefore, appropriate to set relevant provisions therefrom which have a bearing on the principal questions which were debated at the Bar.

Section 3(1) of the Commissions of Inquiry Act, 1952, sets out the conditions for appointment of a Commission and runs as follows:—

"The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly."

The succeeding section deals with powers of Commission in regard to certain matters regarding summoning and enforcing attendance of persons and examining them on oath, discovery and production of documents, receiving evidence on affidavits, requisitioning any public record or copy thereof from courts or offices, issuing commissions, requisitioning documents and examining witnesses in regard to any other matter which may be prescribed. Then follows section 5 dealing with the additional powers of Commission. Sub-section (2) of that section which is the pivotal provision for resolving the present controversies provides as follows:—

"The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to

furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject-matter of the inquiry."

3. The State Government being of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of investigating into the truth and correctness of the allegations made against the two I.P.S. police officers which had been the subject-matter of publication in various newspapers and periodicals including Niakhunta and being also of opinion that those allegations are definite matters of public importance issued a Notification No. 1323-C., dated 28th March 1968, in its Home Department appointing me as Commission to enquire into the following matters, viz.:—

- (1) Whether the above allegations are true and correct;
- (2) The circumstances leading to the agitation thereon

4. The point which falls to be considered is whether the Editor could legally be required to disclose the names of persons who constitute the source of his information, depending upon which he made the aforesaid publications in his Niakhunta Magazine. The legality of the requirements depends on the following matters:—

- (1) Whether the information sought for are relevant to or may be useful for the subject-matter of enquiry according to the opinion of the Commission.
- (2) Whether the answers to the questions can be excused by some immunity or privilege which may be available to the Editor under any law for the time being in force.

5. Mr. M. S. Moharity, learned counsel for the Editor, Niakhunta, has raised a number of contentions. It must be stated at the outset that he has candidly conceded that there is no law made in exercise of legislative powers which is in force in India upon which he can lay his fingers as conferring the privilege claimed by the Editor.

6. The primary purpose of this inquiry is to arrive at a conclusion as to whether the allegations against the two police officers are true and correct. The Editor, in view of his profession of journalism, undoubtedly enjoys a large measure of freedom which belong to the people in his class and it is the function of such journalists and newspaper men to expose wrong doing both on the part of the public officers and the Government and try to eliminate all kinds of corruption and

inefficiency from the administrative structure. The Editor himself has stated in his evidence that he is running his journal with the crusading spirit of obliterating meanness, corruption, etc., from the social structure as well as from the Government of the country. When the Editor is actuated with such noble motive, it must be assumed that he possesses a due sense of responsibility and that he acts in making serious allegations in his journal against high-ranking public officers, on the basis of very trustworthy source of information. The Commission has to find for himself, on the basis of evidence on record, as to whether the allegations are true or not; and he cannot rubber-stamp the conclusion reached by the Editor on the presumed trustworthy character of his source of information. The Commission has to track down this source of information and see for itself that it is a trustworthy source. It is the publication in the Niakhunta and other newspapers which gave cause to the Government to set up this Commission to enquire and logically, therefore, the sources of those informations furnished must be scrutinised at first hand to see whether they are dependable or not. There can be no doubt, therefore, disclosure of the source of information of the Editor is very useful for the subject-matter of the enquiry. Apart from the usefulness of the source of the Editor's information to the enquiry, they are also relevant. No other avenue of access to that very source is available and that source, viz., the persons who by their statements induced the Editor to believe in the truth of the allegations, appear to constitute primary and important evidence. It is not difficult to see that the source of Editor's information could as well sway the mind of the Commission, if it is found to be trustworthy. Further, the *bona fide* and honest character of Niakhunta publication has also a bearing on the second matter of enquiry, viz., the circumstances leading to the agitation and calls for adjudication. So disclosure of the names of the persons who provided informations to the secret agents of the Editor which formed the basis of his opinion, is necessary to explain or support or rebut not only the truth of the allegations, but also the conduct of the Editor in publishing the same. Findings must be reached on these facts, as they may, in conjunction with other facts, make the existence or non-existence of the *bona fide* character of the publication and of the truth or otherwise of the allegations highly probable or improbable. I am, therefore, unhesitatingly of the view that the question put to the Editor to disclose his source of information is not only useful for the subject-matter of enquiry, but also relevant and necessary.

7. The second point for consideration is whether the Editor has a privilege by law entitling him to refuse to reveal his source of information, or in other words, if he can claim any privilege under any law for the time being in force. On this point Mr. Mohanty elaborates his arguments as follows :

His first contention, as far as I have been able to understand him, is as follows :—

(I) An exception has been engrafted on the general liability of every person to disclose every fact enquired of him in a court of justice, which is known as privilege. This privilege against disclosure is grounded on public policy, the intendment of which is to avoid greater mischief which would flow from admitting some kinds of evidence than from excluding them. It is, therefore, accorded to certain confidential communications taking place between persons standing in a certain relation, but not to all kinds of such confidential communications. Wigmore in his treatise on evidence has categorised four fundamental conditions as necessary to the establishment of privilege against disclosure of communications between persons as follows :—

- "(i) The communications must originate in confidence that they will not be disclosed ;
- (ii) The element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties ;
- (iii) The relation must be one which in the opinion of the community ought to be sedulously fostered ; and
- (iv) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation."

(Vide Wigmore on Evidence, Vol. VIII, Art. 2285)
In modern times, the press has been given an honoured place in society and it is now recognised to be essential to the welfare of the public that freedom of the press, which is the foundation of free Government of a free people and which rests on the assumption that widest possible dissemination of information from diverse and antagonistic sources shall be made through it, shall be preserved. In order that such freedom of press shall be maintained, the relation between the editors and publishers of newspapers, periodicals, magazines and journalists on the one

stand and their confidential informants on the other ought to be sedulously fostered. Non-recognition of this privilege in legislations of the country is unreasonable. Continued application of the rule of privileged communications strictly to certain class of confidential communications only by legislative enactments in India at present is anachronistic. Some of the States in America have enacted statutes privileging sources of information given to a journalist. To keep abreast of such prevailing tendencies, it is argued, this Commission should extend a similar privilege to the Editor of Niakhunta against disclosing his source of information. The Commission is not a Court, and has been appointed obviously for informing the mind of the Government in regard to certain facts and is not governed by general law, but is to act according to its own procedure and thus, there is no bar to its extending the principle of privilege to the Editor to whom communication has been made in closest secrecy. However desirable it may be to extend the privilege to newspaper men and journalists to which class the Editor of Niakhunta belongs, acting as I do under the four corners of the Commissions of Inquiry Act, 1952, I am bound by section 5(2) of the Act which provides categorically that any privilege which is to be recognised is the one which is available under any law for the time being in force. The Commission can regulate its own procedure, but cannot create a new privilege thereby arrogating to itself the functions of the legislative bodies of the country. To achieve the predominant object of fact finding, large powers have been vested with the Commission to compel any person to furnish all information useful for, and relevant to the enquiry, subject only to a privilege claimable under any law in force. The very amplitude of the power indicates that the only limitation on it will be strictly as provided in statute. Construed in this manner, permissible privilege is as provided in any law for the time being in force and not otherwise. The first contention must accordingly fail.

(II) His second contention is that the privilege contended for is part of the common law of England. The common law of England is law for India till the advent of Constitution of India in 1950 and continues in force in this country as "law in force" within the meaning of Art. 13 (3) (b) of the Constitution of India.

8. In interpreting the expression "any law for the time being in force" in section 5 (2) of the Commissions of Inquiry Act, 1952, Mr. Mohanty takes the aid from Art. 13 of the Constitution. He says that the comprehensive connotation of the expression "laws in force" in Art. 13 (3) (b) of the Constitution as indicated by the following word "includes" is also to be

imputed to the expression: "any law for the time being in force" under section 5 (2) of the Act. He argued that the expression "laws in force" in the amplitude of its connotation includes not only statute-law and judge-made law, but also the common or general law which comprises customs and usages prevalent in the land. For this, he relies on AIR, 1957 Cal., 500; AIR, 1954 Rajasthan, 100 and AIR, 1960 S. C., 1355. The following passage quoted from the Supreme Court decision referred to above amply illustrates Mr. Mohanty's point.

The passage runs thus:—

"On the other hand, Art. 372 of the Constitution has specifically provided subject to the other provisions of the Constitution all the laws in force in this country, immediately before the commencement of the Constitution shall continue in force until altered or repealed or amended by competent legislature or by other competent authority. The expression "law in force" has been used in a very comprehensive sense as would appear from the provisions of sub-cla. (a) and (b) of cl. (3) of Art. 13 of the Constitution. If we compare the provisions of Art. 366 (10) which defines "existing law" which has reference to law made by a legislative agency in contradistinction to "laws in force" which includes not only statutory law, but also custom or usage having the force of law, it must be interpreted as including the common law of England which was adopted as the law of this country before the Constitution came into force. It is thus clear that far from the Constitution making any change in the legal position, it has clearly indicated that the laws in force continue to have validity, even in the new set up, except in so far as they come in conflict with the express provisions of the Constitution. No such provision has been brought to our notice. That being so, we are definitely of the opinion that the rule of interpretation of statutes that the State is not bound by a statute, unless it is so provided in express terms or by necessary implication, is still good law."

To strengthen his contention that the expression "laws in force" occurring in Art. 18 should also apply in interpreting the impugned phrasology in section 5 (2) of the Commission of Inquiry Act, he relies upon another decision of the Supreme

Court reported in AIR. 1964 S. C., 648 (*Jayantilal Amritlal V. F. N. Rana*), where Wanchoo, J discourses upon the meaning of 'law' and says as follows :

"It will be seen, therefore, whether law comes as a command of a sovereign body or as a custom or usage having the force of law, the basic concept is that it should consist of a body of rules which govern the conduct of persons forming the community in which it is enforced and which that community enforces through necessary machinery."

Mr. Mohanty further places his reliance on a decision of the Supreme Court reported in AIR. 1966 S. C., 543 for the proposition that English Common law is applicable in India as law in force and where in absence of any specific rule governing a particular problem, the same is to be decided according to law and equity in case of charted High Courts, and elsewhere according to 'justice', 'equity' and 'good conscience' and the expressions "equity and justice" and "equity and good conscience" have been consistently interpreted to mean rules of English common law so far as they are applicable to Indian society and circumstances. In other words, where a decision is to be made according to "justice and equity" rules of the common law of England on the subject have to be imported and principles underlaying the same applied. Reliance is further placed on a decision of Federal Court reported in 1941 F.C., 16 at page 31, where in interpreting the expression "all laws in force in British India" occurring in section 292 of the Government of India Act, 1935, it was held that the same applied not only to statutory enactments then in force, but to all laws including the personal laws, customary laws and common laws. The phraseology of section 292 of the Government of India Act, 1935, as amended in 1937, and the marginal notes thereto were stereotyped in Art.13 (3) (b) of the Constitution, and accordingly, it is submitted that having regard to the background of legislative history of that Article, the meaning attributed to the expression "laws in force" in Atiqa Begum's case (1941 F.C. 16), should also be adopted for that expression in Art. 13(3) (b). In view of all these judicial decisions, it must be deemed to have been settled, as argued by Mr. Mohanty, that the expression "any law for the time being in force" in section 5(2) of the Commissions of Inquiry Act, includes the common law of England. Having reached this conclusion he elaborates his argument by canvassing that the privilege as claimed by the Editor, Niakhunta, in this case is one which has been recognized

and extended to Editors, Publishers of Newspapers and all pressmen and newspapermen under the Common Law of England, and as such, that is a claimable privilege under section 5(2) of the Commissions of Inquiry Act.

9. His third argument, in the alternative is, that if English Common Law is determined not to be the law for the time being in force under section 5(2) of the Commissions of Inquiry Act, the same may be applied as a matter of justice, equity and good conscience. Reliance is placed on a passage occurring in the judgement of Saha, J. in case the of *Bhagwandas-v-Girdharlal & Co.*, AIR. 1966 S.C., 543. The passage runs thus:

"In the administration of the law of contracts the Courts in India have generally been guided by the rules of English common law applicable to contracts where no statutory provision to the contrary is in force. The Courts in the former Presidency towns by the terms of their respective letters patents, and the Courts outside the Presidency towns by Bengal Regulation III of 1793, Madras Regulation II of 1802, and Bombay Regulation IV of 1827 and by the diverse Civil Courts Acts where enjoined in cases where no specific rule existed to act according to 'law or equity' in the case of charted High Courts and elsewhere according to justice, equity and good conscience which expressions have been consistently interpreted to mean the rules of English common law, so far as they are applicable to the Indian society and circumstances."

For this contention, reliance is also placed on 31 I.A., 239.

10. I think that it will be more appropriate to firstly deal with the contention that the privilege as contended for is obtainable under the Common Law of England, because the conclusion reached on this topic adversely to it, would make it unnecessary to decide the other contentions that the Common Law of England is included in the expression "any law for the time being in force" in section 5(2), or that the same may be extended to the present case and a like privilege, as in common law of England, as claimed by the Editor, be recognized and accorded.

11. Before the independence of India, this country was a part of the British Commonwealth and the apex of judicial structure of all Commonwealth countries was at London, and therefore the growth and progress of law in India kept tune with the Common Law of England. In that background, it was reasonable, in the interest of homogenous growth of law in the Commonwealth, that the rules of English Common Law shall be

adopted as far as practicable in unoccupied fields in the administration of law. For a considerable length of time the Privy Council manned by English Judges having the final jurisdiction to interpret the laws of this country, naturally imported English Common law rules in their decisions wherever they felt it necessary; and logically, therefore, the subordinate courts in the commonwealth countries were expected to follow the English Common Law rules where statutory law was silent. After independence, the reason for homogenous growth of law in commonwealth countries disappeared, but legal system and legal conceptions both in India and England being embedded in the same jurisprudence, their growth is likely to be similar. It is, therefore, appropriate that in resolving problems where statutory law provides no answer, the development of common law of England should be noticed and applied, because both that common law and the Indian statutes, may, quite legitimately be regarded as the off springs of the same mother.

12. It is now to be considered if there in any imperative rule of privilege in English Common Law as claimed. It is said that there is a set of rules of conduct prevalent in English Society which respect confidential communications made by persons to the Editors, Publishers of newspapers or agents of the press and which have received the sanction of the English Society and respected by English Judicial authority. This practice of respecting confidential communications made to the Editors, publishers of newspapers or the agents of the press, has almost been uniformly followed by English judges for about last seventy years and has thereby been practically engrafted as a rule of common law of England. Reference in this connection has been made by Mr. Mohanty to a number of English decisions. The first case cited is what is known as Mosley's case reported in 1893 A.C., 138. In that, there is a solitary sentence in the judgment upon which great stress is laid, and it is to the effect that there is no law in England which can compel an Editor to disclose his source of information. That was a contempt case and in course of the contempt proceedings, the Editor who had been summoned as the principal accused, was also questioned to disclose the name of the person who contributed the contumacious article which he published in his paper. This question was put with the object of summoning the undisclosed correspondent as a co-accused with the Editor in the contempt of court proceedings. It is in these circumstances, the observations have been made that there is nothing in the law, which obviously means the law relating to contempt of courts, which invests the Court trying the

contempt, with any power to compel the ostensible contemner to disclose the name of the undisclosed contemner. It was not a case in which the Editor was appearing as a witness at which stage the question was asked and which he was bound to answer under the law of evidence. Therefore, having regard to the context of facts in which that observation was made, it cannot be said that that is an authority for the proposition that there is a rule of common law in England conferring newspaper-immunity on the Editors and Publishers from disclosing the names of their informants.

13. The next case upon which reliance was placed was the *South Suburban Co-operative Society Ltd. v. Orum*, 1937 (2) *K. B. D.*, 690. This case arose out of an action for damages and injunction in respect of an alleged libel contained in a letter signed by the defendant and published in the newspaper. The defence was a plea of fair comment and privilege raising the issue as to the intention of the defendant at the time when the statement complained of, was published. In this case, the special rule of practice which exempted a proprietor or publisher of a newspaper from disclosing the name of the person who supplied the information which was the subject-matter of publication was accepted and acted upon, but this rule was stated not to extend to protect the defendant who is the writer or contributor of a letter from disclosing the name of the informant. Thus, the privilege which was extended out of this rule of practice conferred immunity only on the Editors and publishers and not on the writer or contributors of letters in newspapers. Scott, L. J. who delivered the judgment in this case recognized the old rule of practice conferring exceptional immunity from disclosing the names of the informant upon newspaper Editors, and publishers but confined that rule strictly to the class of newspaper defendants. It was recognized that in ordinary cases of libellous statements made upon information received from third parties, it is relevant, having regard to the plea of fair comment, "to know not only what the information was, but also any facts affecting the propriety of the defendant's action in accepting the information at its face-value to the extent of making defamatory statement about the plaintiff upon the credit of it." Apparently, the learned Judge did not like to extend this old rule of practice to cases beyond editors, and publishers of newspapers being aware of extreme relevancy of such discoveries to the issues involved in libellous action where the defence plea was a plea of fair comment. He at the same time also recognized that the old rule of practice even in respect of newspaper-defendants can be departed from in

special circumstances which according to him "has not been explored very much judicially". It may be remembered that this question of old rule arose in an interlocutory proceeding arising out of an action for libel in which the plaintiff sought to administer some interrogatories to the defendants claiming discovery of the names of their informants.

14. The next case cited was the case of *Lawson v. Odham Press Ltd.*, reported in 1948(2) *All England Reports*, 717. This case arose out of an action for libel in respect of an article published in the newspapers. The plaintiff sued the printer, publisher and proprietor of the newspaper as well as the writer of the article. The defence plea was that the words complained of, were a fair comment on a matter of public interest, made in good faith and without malice. The question of application of old rule of practice conferring immunity on newspaper editors and publishers arose when the plaintiff sought to administer a set of interrogatories requiring discovery of the name of the informants on the basis of which the articles were written and published. Tucker, L. J. who delivered the judgment said:—

"It has now become a matter of practice, and possibly, a matter of law that an interrogatory of this kind will not be allowed to be administered to the proprietor, or publisher of a newspaper."

He also referred to a line of cases which refused to extend this exceptional immunity to authors of libellous letters published in newspapers. In so holding the learned Judge further said:—

"It is open to the Judge to recognize the existence of a special rule of practice and not to allow interrogatories of this kind to be administered to the proprietors and publishers of newspapers and he should allow this kind of interrogatory to a person in the position of a writer.

The learned Judge further said that the counsel did not argue before him that the so-called rule of practice was in fact a rule of law. He expressed no opinion as to what the ultimate result might have been if the question was mooted. This is clear from the following passage:—

"If the learned Judge had intimated, or if we were driven to the conclusion that he had disallowed this interrogatory purely on the ground that he considered that as a matter of law that the defendant was entitled to

protection which has been accorded to the proprietors and publishers of newspapers; and that it would have been necessary to hear counsel for the defendant on that matter. I express no opinion as to what the ultimate result might have been."

He, however, was inclined to view this rule of practice as one which had grown up in what he considered to be in public interest, and was recognized chiefly in cases of proprietors and publishers of newspapers, and that it is open to a judge to decide in his discretion to refuse to allow an interrogatory to be administered to a person other than the editor and publisher for discovery of names of informants which would have the effect:—

"to all intents and purposes of nullifying the usefulness of this rule of practice."

15. A case arose in Australia which was a part of the British Commonwealth, in which the Governor-in-Council issued a Commission under the seal of the State of Victoria constituting and appointing a commission to inquire into the question whether there had been any bribery of or attempt to bribe, any member of Parliament, and if so, what persons were involved. In course of that enquiry, the editor of the newspaper was called as a witness and was asked to give the source of his information published in his paper relating to this matter under inquiry. The Editor refused to answer the question on the ground, *inter alia*, that the editor of a newspaper or a journalist cannot be compelled to disclose the source of information confidentially obtained. The law of evidence which governs such an enquiry conferred upon witnesses certain statutory privileges, but not the one as claimed by the editor, on the footing of confidential character of the information. This case is reported in 63 Commonwealth Law Reports, p. 73 (*McGunniness v. The Attorney-General of Victoria*). This case was decided by a Bench of five Judges. They unanimously held that no privilege attached to the proprietors, editors and writers which entitled them to refuse to disclose at a trial the source of information which they have used in producing the contents of the newspaper. Latham, C. J., advertising to the question of privilege said, after referring to the English cases of *South Suburban Co-operative Society Ltd. v. Orum*, 1937(2) *K. B. D.*, 690; and *Lyle-Samuel v. Odhams Press Ltd.*, 1920(1) *K. B. D.*, p. 141, that the rule referred to in these English cases was a general rule subject to exceptions in special circumstances and that they only establish the general rule of practice in such matters, and that those cases referred to interlocutory applications for discovery. He further said in this regard that: "The

industry of counsel was unable to discover any case in which it had been either decided or suggested that a witness at a trial could not be compelled to answer such a question where it was relevant."

So observing, the privilege claimed was negatived. Rich, J made the following pertinent observations which are quoted herein below :—

"Divided duty has produced many martyrs. The appellant (editor of newspaper) was called upon to choose between his duty under the law to answer questions relevant to the inquiry, unless he had some lawful excuse for refusal, and what he conceives to be his duty as a pressman to his informant to maintain silence. He chose to observe the latter supposed duty and to refuse to divulge the source of his information..... The cause, I think, is not worthy of even so much martyrdom. It seems to me to be itself founded on a paradox. For it is said that newspapers will not be able to discover the truth and publish it unless when the courts of justice in their turn want the truth press-men in whom it has been confided are privileged to withhold it. It is easy to understand that editors and other journalists would find it some help in their search for news if they were able to assure those in possession of information that they could secretly impart it without fear that courts of law would be able to discover its source..... Privilege from disclosure in courts of justice is exceptional and depends upon only the strongest considerations of public policy. The paramount principle of public policy is that the truth should be always accessible to the established courts of the country. It was found necessary to make exceptions in favour of State secrets, confidence between counsel and client, solicitor and client, doctor and patient, and priest and penitent, cases presenting the strongest possible reasons for silencing testimony. But hitherto no one has entertained a claim that courts should not be allowed to know what a journalist has discovered. It is true that in the process of interrogatories and discovery of documents before the trial of an action of libel courts of common law have exercised a statutory discretion as to what they shall allow by refusing to compel a newspaper-defendant to say who wrote the libel or where the newspaper got the information on

which the libel is founded. But that depends on special considerations affecting liability for defamation and the discretionary nature of discovery..... In my opinion the appellant has no lawful excuse for refusing to answer the questions put to him by the commissioner."

Starke, J after referring to all the English cases on the point till 1937 stated as follows:—

"Next it was submitted that the source of the appellant's information upon which the newspaper articles were based was privileged and that he could not be compelled to disclose it. No such privilege exists according to law. Apart from statutory provisions, the press in courts of law, has no greater and no less privilege than every subject of the King. But in actions against newspapers or trade periodicals the rule of practice in the King's Bench Division is to refuse to compel the defendant to disclose the name of the writer of an article or the source of the newspaper's information."

He said:—

"It is a rule founded, I apprehend, upon convenience and to limit fishing and oppressive inquiries and that the application of the rule must depend upon the circumstances of the case and the discretion of the judge or other authority."

Dixon, J who later became the Chief Justice of the High Court of Australia gave his opinion on the question of privilege claimed by the newspaper editor as follows:—

"No one doubts that editors and journalists are at times made the repositories of special confidences which, from motives of interest as well as of honour, they would preserve from public disclosure, if it were possible. But the law was faced at a comparatively early stage of the growth of the rules of evidence with the question how to resolve the inevitable conflict between the necessity of discovering the truth in the interests of justice on the one hand and on the other the obligation of secrecy or confidence which an individual called upon to testify may in good faith have undertaken to a party or other person. Except in a few relations where paramount considerations of general policy appeared to require that there should be a special privilege, such as

husband and wife, attorney and client; communications between jurors; the counsels of the Crown and State secrets and, by statute, physician and patient and priest and penitent, an inflexible rule was established that no obligation of honour, no duties of non-disclosure arising from the nature of a pursuit or calling, could stand in the way of the imperative necessity of revealing the truth in the witness-box."

Referring to the English rule of practice he says:—

"It is not a rule of evidence, but a practice of refusing in an action of libel against the publisher, & C. of a newspaper to compel discovery of the name of his informants. It rests not on a principle of privilege, but on the limitations of discovery; to quote the comment of Prof. Wigmore, who expresses himself somewhat strongly against the pretensions to a privilege on the part of journalists (Treatise on Evidence, 2nd ed. Vol. 5 Sec. 2286, No. 7).

In my opinion the existence of the practice and the reasons on which it is based can form no ground for holding that a lawful excuse existed for the appellant's refusal to answer as to his source of information. Lawful excuse means a reason or excuse recognised by law as sufficient justification for a failure or refusal to produce documents or answer questions."

He was of opinion that if there was a trial in which the guilt or innocence of a given member of parliament or a specific person supposed to have given or offered bribe, was in issue, the question put to the editor for discovery of his informant would not be relevant, but where it is not a trial of a case, but is an enquiry held by a commission set up for the purpose by the Governor for ascertaining unknown facts, the tracing of informants and the discovery of the source of knowledge fell within the scope of the inquiry and the question put to the editor was material.

16: This question of privilege was considered by English courts in two very recent cases reported (1) in 1963 (1) A. E. R., 787 and the other at page 420 of the same volume. In both these cases a commission of inquiry had been set up in which some newspaper men or editor or journalists were asked to disclose the source of their informations which they refused and on recommendation of the Commission of Inquiry, the matter had come before the English courts for deciding the matter as to

whether the claim of privilege existed in English law and if not to punish him. Parker, C. J. who decided the case at page 420 of the said English Report said at p. 426 as follows :—

"One of the most remarkable things, as it seems to me, is that, in all the reports in this country, there is not to be found one single case where this so-called privilege or immunity has been raised and ruled on at the trial of an action, as opposed to being dealt with in interlocutory proceedings. As far as I know, this is the first time that such a matter has been raised here. It is, perhaps, idle to speculate on the reasons. It may be that the courts have been tender (and I hope they have been, for my part, because I have great sympathy with the press) in requiring a journalist to answer such a question. It may be equally that the press themselves have recognised that it is a question which they must answer, and have it answered."

At page 427 it was again said :—

"In those circumstances, I have without the slightest hesitation come to the conclusion that in regard to the press, the law has not developed and crystallised the confidential relationship in which they stand to an informant into one of the classes of privilege known to the law. As I have said, it would still, as I conceive it, remain open to this court to say in the special circumstances of any particular case that public policy did demand that the journalist should be immune, and I, therefore, ask myself whether, in the circumstances of the present case, it is necessary from the point of view of public policy that I should recognise the claim to immunity which is raised. The answer as I see it must be : No. I suggested, or tried to suggest to the respondent that really he has no complaint against the courts, if complaint there be, it is that Parliament have said that the public interest of the country demands that an inquiry should be made in a searching way under these terms of reference. That is the public policy so far as this case is concerned, and, however, much sympathy one has with the respondent, it is quite impossible to say that his personal interests, indeed the interests of his profession should, as a matter of public policy, be preferred to the overriding public policy of Parliament, as evidenced by the setting up of this inquiry."

Lord Denning, who decided the case reported at page 767 of the aforesaid English Report said at page 772:—

"It seems to me, therefore, that the authorities are all one way. There is no privilege known to the law by which a journalist can refuse to answer a question which is relevant to the inquiry, and is one which, in the opinion of the judge it is proper for him to be asked. I think it plain that, in this particular case, it is in the public interest for the tribunal to inquire as to the source of information. How is anyone to know that this story was not a pure invention, if the journalist will not tell the tribunal its source? Even if it was not invention, how is any one to know that it was not the gossip of some idler seeking to impress? It may be mere rumour unless the journalist shows that he got it from a trust worthy source. And if he has got it from a trust worthy source (as I take it on his statement he has which I fully accept), then, however much he may desire to keep it secret, he must remember that he has been directed by the tribunal to disclose it as a matter of public duty, and that is justification enough."

These two decision explore the theory that the privilege claimed by the editor, Niakhunta, here was one of the kind that was recognised by the common law of England. In my view, therefore, in the light of the aforesaid discussions and the question of privilege as decided both in Australian and English courts, there is no such privilege as claimed, under the English common law.

17. On this conclusion of mine two of the contentions of Mr. Mohanty are not required to be dealt with, viz, whether the common law is the law for the time being in force within the meaning of section 5(2) of the Commissions of Inquiry Act, and secondly, that to recognize and act upon such privilege as part of common law rule on grounds of justice, equity and good conscience. The privilege so far claimed was on the footing of confidential nature of the communication between the editor and his agents. Now the claim of privilege is pressed forward on different grounds based upon Art. 20(3) of the Constitution of India. A separate application has been filed on 23-8-1968 on behalf of the Editor, Niakhunta, specifically claiming that constitutional guarantee against compulsory discovery of informations which might either directly incriminate or be the basis for the prosecuting agency in ferreting out other evidence

which could be used in the criminal case. Before dealing with this claim of constitutional privilege, it is necessary to recapitulate a few essential facts.

18. The Bus incident took place on the 27th of December 1967, which was published in the newspapers. An article centering round this incident was published in Niakhunta of 13th March 1968. In that very issue, photo of a letter purporting to have been written by Mr. S. P. Mallick to Mr. D. P. S. Chauhan was also printed. This bus matter was agitated in the Orissa Legislative Assembly by means of a call attention notice on 13th of March and adjournment motion on the 27th of March, 1968. The student's union of the medical college issued a notice to Government on the 21st March 1968 demanding an enquiry into the matter. A similar demand was also made by student's unions of ten other colleges, dated 24th March 1968. Thus the even tenor of life in Orissa was convulsed by demands for punitive action against the two I. P. S. officers and by other types of agitation. On 23rd March 1968, Mr. Chauhan, who appears to be one of the main targets of the agitation, filed an F. I. R. before the plant-site police station, Rourkela, against the Editor of Niakhunta. That criminal case is pending investigation by the police. The Inquiry Commission was constituted by notification of the Home Department, Government of Orissa, dated 28th March, 1968. There is no manner of doubt that in the eye of law the Editor of Niakhunta is an accused of certain offences expressly enumerated in the aforesaid F. I. R.

19. The proceeding held by virtue of the said Government notification under the provisions of the Commission of Inquiry Act, 1952, is undoubtedly a civil proceeding for finding out certain facts. It does not concern itself, either directly or indirectly, with the collection of any evidence regarding any alleged offence against the Editor of Niakhunta, nor does it purport to be a criminal proceeding in which the Editor is likely to be punished. In this background of facts, the claim of privilege is to be noticed and decided.

20. The claim of privilege is based on Art. 20 (3) of the Constitution of India. To understand the contentions raised and the grounds of difference of judicial opinion regarding the meaning to be attributed to clause (3) of Art. 20, it is necessary to quote the entire article. This article runs as follows:—

"20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be

subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to depose against himself."

21. A number of decisions have been made regarding the interpretation of the various clauses of Art. 20, and those decisions indicate a divergence of view with regard to the meaning of clause (3) of Art. 20. One of such views may be called a strict and narrow view, whereas the other view may be called a liberal one. I feel it is worthwhile and necessary, before discussing those decisions and indicating the reasons for accepting one view or the other, to briefly notice the ancient lineage of the principles embodied in Art. 20 (3) which has been very lucidly set out in the judgement of Tek Chand, J in the case of *Peoples Insurance Co. Ltd., v—Sardul Singh, AIR. 1962 Punjab, 101*. The early inquisitorial method of investigation which involved extreme mental and physical torture was prevalent in ecclesiastical courts and adopted in trials before the Courts of Star Chamber, started a current of opinion in the English legal world demanding abolition of such inquisitorial system, and the force of this opinion ultimately prevailed accepting a right of silence in the accused. This privilege of the accused to remain silent and be free from any compulsion of disclosing facts or making statements which might form the basis for his conviction was gradually recognized in English statutes. This privilege which originally belonged to an accused, was not extended to a witness in the same amplitude and to the same extent. The witness was compelled to answer all questions which might incriminate or have a tendency, directly, or indirectly, to incriminate him or to expose him, directly or indirectly, to any penalty, and the only safeguard provided was that his answers given in any proceeding other than the proceeding where he is an accused, are barred from use in any court of law. This is quite clear from section 132 of the Evidence Act which was passed in 1872. This privilege of the accused which had been asserted and ultimately recognized by English law, was incorporated as a constitutional privilege in the Constitution which the Americans gave to themselves. Though the American Constitution in terms extended this privilege only to criminal cases, it was extended to other proceedings by judicial decisions, and thus, in America, the constitutional privilege applies alike to civil and criminal proceedings whenever an answer might tend to incriminate a person deposing. — *See 100 L. J. 1000*

22. Long before our Constitution was passed by the Constituent Assembly, the motion against excess of privilege had set in, both in England and United States of America. In 1882, Jessel M. R., in (1882), 20 Ch. D. 294 said :—

"Perhaps our law has gone even too far in protecting a witness from the chance of convicting himself."

In 1937 Cordozo, J., in *Palko-v-Connecticut*, (1937) 302 U.S. 319, attempted to strike a balance between the privilege conferred on the accused and his obligation and duty to respond to an oral inquiry. A note of warning was struck by Professor Wigmore against the extreme limits to which the privileges were being carried, and observed as follows in his treatise on Evidence, Vo. 8, para 2251 :—

"In preserving the privilege, however, we must resolve not to give it more than its due significance. We are to respect it rationally for its merit, not worship it blindly as a fetish. We are not merely to emphasize its benefits, but also to concede its shortcomings and guard against its abuses. Indirectly and ultimately, it works for good, for the good of the innocent accused and of the community at large. But directly and concretely it works for ill—for the protection of the guilty and the consequent derangement of the civil order.

The current judicial habit is to ignore its later aspect and to laud it indiscriminately with ~~false~~ cant..... Courts should unite to keep the privilege strictly within the limits dictated by historic fact, cool reasoning, and sound policy."

23. It has now been accepted by the Supreme Court that before the provision of Art. 20(3) is invoked, the witness must have been an accused at the time of claiming privilege, and there is not much dispute also on the question that a person against whom an F.I.R. has been lodged is in the category of an accused. The first direct decision of the Supreme Court on this provision of law is to be found in the case of *N. B. Sharma and others-v-Satish Chandra*, 1954 S.C., 300. In this case the entire background in which this doctrine of privilege was first conceived, and then developed and lastly adopted, both in English jurisprudence and the American jurisprudence, was reviewed and also the benefits and the defects of continuing the system of conferring such privilege was stated. This is what is said in the judgment :—

"In view of the above background, there is no inherent reason to construe the ambit of this fundamental right as comprising a very wide range... Nor would it be

legitimate to confine it to the barely literal meaning of the words used, since it is a recognized doctrine that when appropriate, a constitutional provision has to be liberally construed, so as to advance the intentment thereof and to prevent its circumvention.

Analysing the terms in which this right has been declared in our Constitution, it may be said to consist of the following components :

- (1) It is a right pertaining to a person "accused of an offence" (2) It is a protection against "compulsion to be a witness" and (3) It is a protection against such compulsion resulting in his giving evidence against himself. The cases with which we are concerned have been presented to us on the footing that the persons against whom the search warrants were issued, were all of them persons against whom the First Information Report was lodged and who were included in the category of accused therein, and that, therefore, they are persons accused of an offence within the meaning of Art. 20(3), and also that the documents for whose search the warrants were issued being required for investigation into the alleged offences, such searches were for incriminating material."

Then it is further stated :—

"Broadly stated the guarantee in Art. 20(3) is against 'testimonial compulsion'. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Art. 20(3) is "to be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness or the like. "To be a witness" is nothing more than "to furnish evidence" and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes."

The passage quoted above pointedly indicates that the constitutional guarantee is not to be confined to the oral evidence of a person who deposed standing his trial for an offence. It can

apply or be invoked in cases other than the criminal proceedings in which the accused is a witness. It is held that the protection afforded to an accused is not merely any testimonial compulsion in court room, but may as well extend to compelled testimony previously obtained from him. So logically it follows that a person who is an accused in the legal sense of the word, cannot be compelled to furnish evidence, while deposing as a witness in another proceeding against himself. It was also held there that the constitutional guarantee under Art. 20 (3) would also extend to any compulsory process for production of evidentiary documents which are *reasonably likely to support the prosecution evidence*. This therefore, makes it appropriate to hold that this constitutional guarantee is available to a person accused of an offence in any proceeding so long as he is in jeopardy as an accused. There is nothing in the case to indicate that the information which is compelled out of an accused, must be in connection with the criminal case either at investigation stage or at its trial stage. It is not difficult to visualise that if the prohibition against testimonial compulsion is confined to criminal proceedings, only the constitutional guarantee will be reduced to empty nothingness as the same can be circumvented by compelling the accused while testifying as an ordinary witness, in a civil proceeding, to disclose informations which can be useful in either investigation or trial of the criminal case. The interpretation of this article must be such as to make full guarantee available to the accused. The constitutional privilege should not be permitted to be defeated by indirect means as might happen if a person who is an accused appears as a witness, in a proceeding with which the prosecution has no direct connection, and he is compelled as such witness to disclose facts within his personal knowledge relevant to the investigation or trial of the offence against him, in which case, they may either be used in the criminal trial or be used as clues, which, if followed up, would ultimately lead to his incrimination or conviction. If that is permitted, this would amount to punishing the man by his own evidence or completing the chain of evidence against him by his own admission. It is a wholesome principle that direct legal provision cannot be violated by indirect means. If the sanctity of the constitutional guarantee or privilege as contained in Art. 20(3) of the Constitution is to be preserved, then all attempts to extort statements from a witness in a civil proceeding against whom a criminal investigation is pending which might ultimately be the basis of further investigation by the police or may be used against him in the criminal trial should be thwarted. This view gets substantial support from the decision reported in AIR. 1960 Punjab, 86, in which the direct question was whether Art. 20(3) could be invoked in a

proceeding under Commissions of Inquiry Act, 1952, as is precisely the case here. Against this view, it is argued that the Supreme Court has, in a series of cases, construed Art. 20(3) to show that the character of the forum before which proceedings were initiated or conducted was decisive of the matter. I will, therefore, proceed to notice those Supreme Court decisions to see if any of them is a direct authority against the view expressed immediately above.

24. The whole doctrine against self-incrimination was considered by the Supreme Court in 1954 S. C., 300 (*N. B. Sharma-v-Satis Chandra*) which has already been referred to and componously quoted from. It was held there that the protection under Art. 20(3) is not to be confined to what transpires at the trial in the court room, but may be available at other forums. This case came in for review by a Bench of eleven judges in the case of *State of Bombay-v-Kathi Kalu Oghad* reported in AIR. 1961 S.C., 1808. In the latter case it was held, *inter alia* that the expression "to be a witness" could not be limited to the evidence given in the court-room but extended to evidence obtained under coercion in forums outside the court-room and that expression means "imparting knowledge in respect of relevant facts by oral statement or a statement in writing made or given in court or otherwise". To attract Art. 20(3) a person must have stood in the character of an accused at the time of his deposition and it is not enough that he should become an accused at any time after the statement has been made. The phraseology 'made or given in court or otherwise' in the quoted passage from the decision in Oghad's case may be logically extended to a case like the present. In the case of *Mohammed Dastagir-v-State of Madras* reported in 1960 S. C., 765 it was held that before Art. 20(3) came into play, two facts had to be established, namely, that (1) the person must have been accused of an offence, and (2) he was compelled to be a witness against himself. There is another decision of the Supreme Court reported in AIR. 1964 S. C., 1552 which says in substance that one of the essential conditions for application of Art. 20(3) is that the person claiming the protection must be an accused before or at the time the testimony is being compelled from him.

25. None of the Supreme Court decisions noticed above categorically lays down that Art. 20(3) cannot be invoked, unless a person claiming privilege is an accused in the very proceeding in which he is compelled to testify or in any other proceeding which is an off-shoot of the main proceeding where he is an accused.

26. The argument of the Bombay High Court in AIR. 1959
Bombay 320 (*Raj Narayanlal Bansilal-v-M. P. Mistry*) that the
constitutional guarantee cannot be invoked in any civil proceeding
which is separate from the proceeding where he is an accused,
did not receive direct attention of the Supreme Court in 1961
S. C., 29.

27. There are two cases of Punjab High Court which adopted opposite views, one of which was a case which arose out of a proceeding before the Commission of Inquiry set up under the Commissions of Inquiry Act, 1952, reported in 1960 Punjab, 86 (*Allen Berry & Co.-v-Vivian Bose*) and the other reported in 1962 Punjab, 101. In the former case there was a commission of inquiry set up under the Commissions of Inquiry Act. In that inquiry against certain Dalmia concern evidence was being recorded when certain objections were raised by the petitioners. One of the objections raised was that they were accused in a criminal case which was pending investigation and that they shall not be compelled to answer questions which might incriminate them in future criminal trial and invoked constitutional guarantee under Art. 20(3) of the Constitution. The order passed by the Commission being against them, they went before the Punjab High Court. One of the questions raised before the High Court was whether Art. 20(3) would be applicable to a proceeding before the Commission which apparently was a civil proceeding and in which the petitioners were not accused, but against whom a separate proceeding had been initiated by lodging of first information report which was admittedly criminal in nature and complexion. This case was decided by a Division Bench of the Punjab High Court in which Grover, J. delivered the judgement. It was held that Art. 20(3) can be invoked in the proceeding before the Commission by witnesses who appeared before it, if and when occasion arose. It was also held that section 6 of the Commissions of Inquiry Act cannot act as a bar against invoking the constitutional guarantee under Art. 20(3). In repelling the argument that section 6 prevents applicability of Art. 20(3) it was said :—

"All that will happen under section 6 of the Act is that his statement shall not subject him to, or be used against him in any civil or criminal proceeding but it will be open to the prosecuting agency to make use of such information that may have appeared in his statement which may lead to the discovery of other evidence which may incriminate him."

After stating that the inhibition in Art. 20(3) is a part of the fundamental right, it was said as follows :—

"But the inhibition in Art. 20(3) extends to the very first stage and the person accused of an offence cannot be compelled to state a fact or produce a document which may tend to incriminate him. The moment such compulsion is exercised he can claim the immunity. Section 6 will merely render his statement immune, but will not afford protection against such compulsion to give self-incriminating answers or to produce self-incriminating documents."

There was a later Punjab case reported in AIR. 1962

101. (*Peoples Insurance Co. Ltd-v-Sardar Sardhul Singh*) where a contrary view was taken. This is a decision by a single Judge of the Punjab High Court which referred to the prior Division Bench decision of the same High Court reported in AIR. 1960 Punjab 86, but did not consider it elaborately and did not give his reasons as to why that Division Bench decision was departed from by a single judge.

28. In my view the decision of Grover, J. is the one to be followed. He has construed Art. 20(3) incorporating as it does, a fundamental right of the citizen of India very liberally. He has adopted an interpretation which is in accord with the reasons for the emergence of this rule in England after strenuous struggle and ensures that the investigation of crime against a person shall not be inquisitorial, but acquisitorial and that in no circumstances shall a man be convicted by his own lips, nor shall any investigation against him be conducted culminating in his conviction by clues obtained from his lips. If this privilege is whittled down by any narrow interpretation of Art. 20(3) then the privilege might be nullified by machinations of prosecuting agencies, for instance, a colourable civil proceeding may be initiated against an accused for the sole purpose of obtaining his statement that might either aid the investigation of the criminal proceeding against him, or facilitate his conviction in the criminal case. That article inheres in it safeguards against the excess user of this privilege. This constitutional provision provides that any information which is obtained from the accused which is only against him as such, is barred. That means the privilege of silence is restricted to real danger and not to remote possibility. Therefore, in each case, where a claim of privilege is raised, the court must decide in facts and circumstances of each case whether the informations sought for from the accused would really endanger him in the criminal trial or that they may reasonably lead to discovery of other

evidence which may incriminate him. Therefore, I am of opinion that the Editor, Niakhunta, against whom a criminal case is under investigation, has a privilege under Art. 20(3) which can be claimed, if and when occasion arises.

29. The next question to be dealt with is whether in the instant case such an occasion has arisen, or in other words, whether he is being compelled to be a witness against himself.

The F.I.R. was lodged by Shri D. P. S. Chauhan against the Editor, Niakhunta, on 23-3-68 at 2 p.m. It alleges that the editor is responsible for causing riots between Oriyas and non-Oriyas by publishing a forged letter which promoted feelings of racial enmity and that such publication of such forged letter was malignantly and wantonly done. This publication was made in February 1968 issue of Niakhunta magazine under the heading "SATYA ABAUN SANGHATIK". These matters are identical to the matters under inquiry by this Commission. The question that would arise both here as well as in the investigation of the criminal case is whether the letter is forged one, and whether the editor had published it in good faith *bona fide* believing it to be true or had published it knowing it to be false and thereby acted maliciously, malignantly and want only. The question whether this letter was deliberately and maliciously forged by the editor and others with the deliberate intention of promoting ill-feeling between Oriyas and non-Oriyas is also a relevant matter both for the inquiry by this Commission as well as in the criminal case. Therefore, there is reasonable ground for the editor to apprehend that any answers taken from him as a witness in this inquiry may pose a real danger to him in the criminal case.

30. He was required to disclose the names of the persons on whose statements he believed and published the article and the letter and he has raised this plea of privilege. Therefore, the thing to be seen is if furnishing of the names may lead to the discovery of other evidence which may ultimately lead to his incrimination, either directly or indirectly by demolition of his defence plea of good faith. It appears to me that his defence would be in real jeopardy in the criminal case if he is compelled to disclose the names of his informants. He would be, thereby, through his own lips, providing materials for facility of the investigation of the criminal case against him which might affect him prejudicially. It is quite possible that such disclosure might as well stand him in good stead and the same is not by itself incriminatory without conjunction of other facts; but apprehending that the same may be used as basis of further investigation leading either to demolition of his defence or to his

incrimination in association of other facts, the editor does not want to disclose voluntarily and claims this guarantee. To compel him to disclose will amount to coerce him to impart knowledge as to certain facts relevant in the criminal trial against himself by reason of the apprehended and inherent potential adverse use of that information by the prosecuting agency. This, then is a proper case where the guaranteed constitutional privilege must be brought to play. Though there is, no privilege which can be claimed by the editor or publisher of newspaper or any other newspaper men against disclosing the source of their information or the names of their informants under the general law, they have such a privilege along with any other person similarly situated by reason of a criminal case pending trial or investigation against them under Art. 20(3) of the Constitution.

Tested from another angle, it would also be a case of compelling the editor to be a witness against himself. "To be a witness against himself" and "incriminate himself" are not synonymous expressions denoting the same conception. The former expression has a larger amplitude of connotation. The word 'incriminate' has been used in the Evidence Act, but the Constitution-makers discarded it for a more sweeping expression, which must be deemed to have been done with a purpose. The editor has a right to refuse to disclose his defence or to adduce his defence evidence in the criminal trial, which might follow, until after prosecution has led its entire evidence. Criminal Procedure Code provides for this right in summons trial, in warrant trial as also in sessions trial. This right, it is quite apparent, will be nullified by compelling the editor to furnish information as to his likely defence witness which is a consequence, adverse to his interest and, therefore, against himself.

31. Mr. Mohanty contended that the editor is not entitled to be cross-examined by the counsel appearing for the various parties in this proceeding. In substantiation of his contention he placed reliance on a decision of the Supreme Court reported in AIR. 1967 S.C., 133 (*State of J & K-v-Bakshi Gulam Mohammad*). I do not think this decision supports the contention of Mr. Mohanty. It is necessary to quote certain passages from that decision, which will show that the point advanced by Mr. Mohanty is not well-taken in the facts and circumstances of this case. The relevant passages are :—

"We first observe that the inquiry before the Commission is a fact-finding inquiry. Then we note that section 10 which is relevant to.....

rules (9 and 10 of our Rules) which in our opinion applies to a person whose conduct comes up for inquiry by the commission directly, has a right to cross-examine only those persons who give *viva voce* evidence before the commission against him.....

Therefore, when section 4(c) of the Act gave the Commission the power of receiving evidence on affidavits, it gave that as an independent power and not by way of an exception to the general rule of taking evidence *viva voce* in open court.....

For these reasons, in our view, section 4(c) of the Act does not confer a right on a party appearing before the Commission to require a witness giving evidence by an affidavit to be produced for his cross-examination. The commission would, of course, permit cross-examination in a case where it thinks that necessary.....

Rule 11 says that in all matters not provided by the rules, the commission may decide its own procedure. One of the matters covered by the rules is cross-examination of witnesses. So the rules contemplate cross-examination as a matter of procedure.

We also feel that the procedure before a body like the Commission has necessarily to be flexible."

I have allowed cross-examination of this witness as I thought it necessary in the interest of justice and equity. My paramount consideration has always been to see that no party who has a large stake in this inquiry is prejudiced by anything done here and, as a principle of natural justice, one party does not get an unfair advantage over another, and this has been the dominant guiding principle in these proceedings.

Therefore this point of Mr. Mohanty is rejected.

Sd./S. K. Ray

CUTTACK

The 4th September 1968.

ANNEXURE II

19-9-68

Questions of privilege were raised in respect of three classes of documents, one was the case-dairy in P.-S. Case No. 125/68 maintained by the officer-in-charge, in course of investigation of an offence or offences on the footing of the F. I. R. lodged by Mr. D.P.S. Chauhan against the Editor, Niakhunta. There is not much controversy as to the relevancy of the entries in the case-diary to the subject-matter of inquiry in these proceedings. The I.-G. of Police, Orissa, has filed an affidavit on 4-7-68 claiming this case-diary as a privileged document and praying that the said document should not be utilised in this inquiry.

2. While claiming such privilege reliance has been placed on the provisions of section 172, Cr. P. C. and Ss. 123 and 125 of the Evidence Act. It is also stated in the affidavit that the case-diary is a confidential document relating to the affairs of the State and that any disclosure of the matters embodied in the case-diary at this stage before completion of investigation would amount to stifling the investigation of the case and that it is in the interest of justice that such premature disclosure should not be made at this stage.

The second class of documents are:—

- (a) S.P., Rourkela's top secret D.O. to D.I.-G., Police, Western Range, No. 192/Con., dated 8-3-68.
- (b) D.I.-G., Intelligence's Secret D. O. letter No. 3002/SB, dated 29-3-68 to S.P., Rourkela.
- (c) S.P.'s reply to the above in his secret D.O. No. 295/Con., dated 2-4-68; and
- (d) D.O. No. 410/Con., dated 25-4-68 from the Superintendent of Police to the D.I.-G., Police, Western Range.

3. Privilege was claimed in the first instance by the I.-G., in his affidavit, dated 5-7-68 filed along with those documents. As generally privilege is to be claimed by the Minister and as I wanted to be satisfied that the documents related to the affairs of the State and that each such document has been carefully read and considered, I required an affidavit to be filed by the Chief Minister briefly indicating the reason why it is apprehended

that their disclosure would injure public interest. Accordingly, the Chief Minister has filed an affidavit stating that he has gone through each document carefully and giving his reasons for claim of privilege in respect thereof. The affidavit of the Chief Minister discloses that those documents apart from comprising some matters relevant to the inquiry, include other matters quite extraneous to the subject of inquiry. It is stated that if these documents are freely utilised in the commission, it will seriously jeopardise the working of the police department and it would be extremely difficult for the police officers to collect intelligence and would thus affect the detection of crimes in the State. It is also asserted by the Chief Minister that these documents are unpublished official records relating to the affairs of the State and the disclosure of their contents would be against public interest.

4. The privilege claimed by the Chief Minister is one under section 123 of the Evidence Act. The Chief Minister, however, does not base his claim of privilege under section 172, Cr. P.C. The I.G. of Police has also based the claim of privilege under section 125 of the Evidence Act, but that section is *prima facie* inapplicable, and this aspect therefore need not be considered further.

5. The third class of document is a report, dated 11th March 1968, submitted by Shri K. Rajgopalan, ex-Deputy Inspector-General of Police (Vigilance). This report deals with one of the subject-matter of inquiry. Therefore, there is no controversy as to the relevancy of the contents of this report. While producing this document under a sealed cover, privilege was claimed by the I.G., Vigilance, by his affidavit, dated 7-7-68, and for similar reasons as aforesaid, on my requirement, further affidavit has been filed by the Deputy Chief Minister of the State, who states that he has carefully gone through the document and is satisfied that disclosure of the contents of this report is not desirable in public interest; rather the disclosure of the contents of the report will harm public interest and would seriously affect the working of the Vigilance Department and hamper detection of crimes. This officials record, it is further stated, relates to the affairs of the State. The privilege, therefore, is claimed obviously under section 123 and 124 of the Evidence Act.

6. At the time of argument, the learned Advocate-General conceded that no privilege, as recognized under the Indian Evidence Act or under any law for the time being in force, can be claimed in respect of the case-diary. He, however, urged

that as a matter of public policy, when a criminal case is pending investigation and the accused in that case is also a participant in this inquiry who, on this footing, would be entitled to look into the case-diary, if it is admitted as evidence in this case, and when thereby the provisions of section 172 would be infringed, the production of the case-diary of the criminal case should not be insisted upon.

7. Section 5(2) of the Commission of Inquiry Act, provisions of which alone bind me, provides that the Commission shall have power to require any person to furnish information on such matters as in the opinion of the Commission may be useful for, or relevant to, the subject-matter of inquiry subject to any privilege which may be claimed by that person under any law for the time being in force.

8. This Act further gives full liberty to the Commission to devise his own procedure subject to the provisions of the Act and consequently it has been held that neither the Indian Evidence Act, nor the Civil Procedure Code, nor the Code of Cr. Procedure or any other Indian Statute shall be binding on the Commission except to the extent to which the Act provides that any provisions thereof shall be adopted. In that view of the matter the only question that falls to be considered is whether sections 123 and 124 of the Evidence Act would apply, but I need not consider that because the learned Advocate-General has already conceded that it would be quite in-appropriate to base any claim of privilege under those two sections.

9. Section 172 of the Cr. Procedure Code contains two clauses. First clause lays down as to what shall be entered by the police officer making investigation in a case diary. It provides that he shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

These are matters which are statutorily required to be entered in the case-diary, but there being no prohibition against recording of statements of witnesses made to him in course of his investigation, these statements are also recorded. In the present case the police diary not only includes matters required under sub-section (1) of section 172, but also statements of witnesses examined by him. Sub-section (2) of that section prohibits user of such police diaries of a case under inquiry or

trial in a Court as evidence, but permits a Criminal Court to use the same for the purpose of aiding any inquiry or trial. The statements of witnesses recorded in the police diary are governed by the provisions of sections 162 and 161, Cr. P. C. Section 162 bars use of statements made by witnesses to the I. O. and recorded in the case-diary for any purpose except as provided in the proviso to that sub-section (1) of section 162, at any inquiry or trial in respect of any offence under investigation. From the phraseology of that section it is quite manifest that the bar is inapplicable at any inquiry which is not in respect of any offence and which is not held under any provisions of the Cr. P.C. The present proceeding is not an inquiry in respect of any criminal offence, nor is it being held under any provisions of the Code of Cr. Procedure. Therefore, section 162 cannot be utilised as a barring provision in admitting the statement of witnesses recorded in the police case-diary as evidence in this case.

10. The bar imposed in sub-section (2) of section 172, Cr. P.C. is only in relation to proceedings in a criminal court, and therefore, clearly inapplicable in this case. The only thing that might be considered is whether on the grounds of public policy, claim for non-disclosure of station-diary entries can be countenanced and if this Commission acting within four corners of the Commissions of Inquiry Act, can take note of any such public policy and act accordingly.

11. This Commission has been set up by the Government of Orissa to enquire into matters which are of definite public importance. There was a large-scale agitation both inside and outside the Orissa Legislature which led to the appointment of this Commission. Therefore, public policy demands that there should be a full inquiry into matters specified in the notification setting up of this Commission of Inquiry. This public policy, in my view, is of far greater importance than the one that might be involved in the disclosure of the contents of the case-diary which might, and not must, affect investigation and trial of particular criminal case against a particular individual.

12. The statements of witnesses taken down by police officers under section 161 are not privileged and a cloak of privilege cannot be woven round them by any act of the I.O. in including such statements in the case-diary. The I. O. has entered in the case-diary the circumstances ascertained by him through his investigation. The case-diary would be a piece of documentary evidence in respect of such circumstances ascertained by the I. O. which

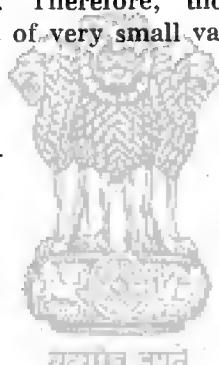
would unquestionably be relevant in this inquiry. The I. O. is also a competent witness to depose to those circumstances which he has entered in the case-diary. He can claim privilege only to the limited extent as provided in section 124 of the Evidence Act, viz., he cannot be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by such disclosure, nor can he be compelled to say whence he got such information as to the commission of any offence. Subject to this limited extent, the I. O. is a quite competent witness and can be required to furnish information on such point or matters as are relevant to this inquiry even though such concerned matters have been inquired into by him in course of investigation into an offence. There is also a catena of cases where it has been held that the protection afforded to police diary by section 172, Cr. P. C. is a limited one and only prohibits an accused person or his agent calling for the police diary or to look into it in course of any inquiry or trial held in a criminal court as respects the very offence in investigation of which the police diary was maintained, and there is no express extension of such prohibition to other cases of inquiry or trial, civil or criminal, and a case-diary is liable to be inspected as well as called for by any party who desires to prove all or any part of the entry therein. In the result, therefore, the claim of privilege against the production of the case-diary in this inquiry and the inspection thereof must fail.

12. The case-diary can legitimately be taken as a material piece of documentary evidence in this case and the I. O. can also be similarly required to furnish information as to the circumstances ascertained by him in course of such investigation which are relevant for the purpose of this inquiry.

13. The other two classes of documents can be dealt with together. As already stated not being satisfied with the affidavits of the I.-G., Police (General) and I.-G., Police (Vigilance), I wanted the Chief Minister or the Deputy Chief Minister of the State to carefully go through the various documents in respect of which privilege was claimed, and then to say if they related to affairs of the State and if their disclosure would be against the public interest or policy of the State. From the affidavits filed by the Chief Minister and the Deputy Chief Minister, I am satisfied that they have carefully gone through the documents and they are satisfied that they are unpublished official records relating to affairs of the State, and that their disclosure would seriously jeopardise the functioning of the police department as a whole and it will expose the secret sources of the police as a result of which detection of crimes in the State will be affected.

to a great extent, and that it is not desirable in the public interest that the contents of those unpublished official records shall be disclosed in this inquiry whereby they will be public property. I am, therefore, satisfied that the considerations which have weighed for claim of privilege are genuinely based on grounds that they relate to the affairs of the State and that disclosure of contents of the documents will cause irreparable public injury and that they are not based on considerations of expediency which may persuade the heads of departments to raise, on grounds that, if the documents are produced, it will defeat the ulterior purpose of the State. Therefore, the documents comprised in second and third class being privileged, shall not be received as evidence in this case. Further, their probative value will be negligible. Those are reports of some superior officers based upon reports received from their subordinates, and accordingly are all hearsay. They do not purport to contain records of any statement of witnesses. Therefore, those reports from the standpoint of utility are of very small value for the purpose of this inquiry.

Sd./S. K. Ray



ANNEXURE III

LIST OF WITNESSES EXAMINED

<i>Abbreviations used</i>	..	C. W. (Witnesses called by Commission)
	..	M. W. (Witnesses called by Mallik)
	..	P. W. (Witnesses called by Mrs. Patnaik)

Seriatim Number	Distinguishing Number	Name
1	P. W. 1	.. Dr. Mrs. Minati Patnaik
2	M. W. 2	.. Late Binamali Patnaik (Father of Mrs. Patnaik).
3	C. W. 3	.. Shri Dibyasingha Sharma (Examiner of questioned documents).
4	C. W. 4	.. Shri Gopal Chandra Behera (Bus Conductor).
5	C. W. 5	.. Shri Sarat Chandra Misra (S. P., Rourkela).
6	C. W. 6	.. Shri Narottam Swain, Driver
7	C. W. 7	.. Shri Dambarudhar Mohanty, Driver
8	C. W. 8	.. Shri Yudhisthir Behera, Cleaner
9	C. W. 9	.. Shri R. N. Panda, Inspector, Plant-site P.S., Rourkela.
10	C. W. 10	.. Shri P. M. Mohapatra, A. D. M., Rourkela.
11	C. W. 11	.. Shri H. N. Das Mohapatra, ex- District Magistrate, Sundargarh.
12	M. W. 12	.. Shri K. Rajgopalan, D. I.-G., Vigilance.
13	M. W. 13	.. Shri Sudhakar Nanda, Secretary, S. C. B. Medical College Students' Union.
14	M. W. 14	.. Shri G. N. Misra, Postmaster
15	M. W. 15	.. Shri Rajkishore Mohanty, Assistant Postmaster, Cuttack.

Serial Number	Distinguishing No.	Name
16	C. W. 16	.. Shri Sankalpatra, District Magistrate, Sundergarh.
17	M. W. 17	.. Shri Dhaneswar Seth, Sub-Post- master, Rourkela-4.
18	M. W. 18	.. Shri Bhagabat Das, Sub-Postmaster, Rourkela-1.
19	P. W. 19	.. Shri Debi Prasad Mohanty, Geo- logist.
20	M. W. 20	.. Shri K. C. Misra, Editor, Niakhunta
21	M. W. 21	.. Shri D. C. Das, Superintendent of Post Offices, Cuttack.
22	P. W. 22	.. Shri Nityananda Kanungo, Vigilance Inspector.
23	C. W. 23	.. Shri Yuvraj Tripathi, Postmaster Rourkela-1.
24	C. W. 24	.. Shri Shubhadev Banjal, Business- man, Rourkela.
25	C. W. 25	.. Shri B. K. Chada, Bus passenger
26	C. W. 26	.. Shri Fakirmohan Sahu, Packer, Rourkela-1 Post Office,
27	C. W. 27	.. Shri Khageswar Behera, Mail Clerk, Rourkela-1 Post Office.
28	C. W. 28	.. Shri Maharaja Krishna Chada, Bus passenger.
29	C. W. 29	.. Shri D. P. S. Chauhan
30	C. W. 30	.. Shri S. P. Mallik
31	C. W. 31	.. Shri Umakanta Biswal, Police Sub- Inspector.
32	C. W. 32	.. Shri S. K. Ghosh, I.G., Vigilance
33	P. W. 33	.. Dr. S. C. Misra, Retired Professor of Med. College.

Sd. S. K. RAY

Commission of Inquiry

ANNEXURE IV

MEMORANDUM OF INSPECTION OF THE DELUXE BUS No. ORS 4736 BY THE COMMISSION AT ROURKELA AT 10 A.M. ON 23rd JUNE 1968

At the time of inspection of the bus the following parties and counsel were present, namely, Shri S. Mohanty, Advocate for Shri S. P. Mallik, Shri R. M. Patnaik, Bar-at-Law for Smt. Minati Patnaik, Shri D. P. Mohapatra, Additional Standing Counsel and Shri S. P. Mallik, Shri D. P. S. Chauhan, Shri K. C. Misra, Printer & Publisher of Niakhunta.

2. Various measurements in respect of seat No. 5 and its distance from seat No. 9 as recorded herein below were taken at the instance of the parties and their counsel, Chiefly at the instance of Shri S. Mohanty and Shri R. M. Patnaik.

Height of the seats from bottom to the top ... 2' 6"
Gap between top to top between two rows of 2' 10"
seats.

Height of the Seats .. 2' 6" (with inclination)

Thickness of pillow .. 5½" (Contractible)

Gap between the seats 5 and 6 is uniform
from the level of those seats up to a height
of 1' 9" and measures less than.

Breadth of the seat .. 17"

Gap between the seat and the back-rest .. 3½" (Contractible)

Gap between the body of the bus and the 2"
back-rest (at the middle) little less than.

At the top between the outer glass and the 5½"
head-rest.

And between inner glass and headrest .. 5"

Height of the back-rest .. 1' 9"

Gap between the window-glass and the backrest—

At the height of 1' .. Little more than 2"

Ditto .. 1½" .. 1½"

3. Practical demonstration was made to find out if a person's hand could be introduced through the opening between seat No. 5 and the bus-body at its immediate right by a person of Shri S. P. Mallik's size sitting on seat No. 9. There were two such openings, one at the place where headrest projects from the backrest and the other at a height of 1' from the bottom of backrest. Shri Mallik agreed to participate in the demonstration. He introduced his hand by stretching it through the gap between the backrest and the right side body of the bus while sitting on seat No. 9 with his back and shoulder pressed against its backrest. His entire palm and a part of the forearm got through. I then asked Shri S. Mohanty to sit on seat No. 5 and I myself sat on seat No. 9 and introduced my hand by inclining forward from the backrest, and touched the body of Shri Mohanty, which as declared by Shri Mohanty, was his chest.

4. There were six lights in the bus fixed to the roof of the bus near the junction of the roof and the bus sides, three on the right side of the roof and three on the left side of the roof. Their position with reference to seats are indicated herein below:—

There are two coloured lights one against seat No. 1 and the other against seat No. 4. There are two white lights against seat No. 13 and 18 and half white and half yellow against seat No. 23. White lights are switched off during journey. Red light against seat No. 4 is controlled by one switch. Blue light against seat No. 1, white light against seat No. 13, and half white, half yellow light against seat No. 23 on the right side roof are controlled by one switch.

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The lights against seat Nos. 18 and 26 could not be demonstrated as the bulbs had been fused.

S. K. RAY

Commission of Inquiry